

# Notes For General Counsel

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A recent [article](#) on the Practical Law website, identified major horizon issues for General Counsel. We highlight a selected sample of these issues by subject area below:

## Commercial: Green Guides

The FTC issues revised Green Guides (Guides for the Use of Environmental Marketing Claims). We previously wrote about this subject [here](#). The Guides can help you avoid liability for deceptive marketing practices and address such matters as exaggeration, use of images, general environmental benefits and certifications/seals.

## Corporate Governance and Securities: Compensation Consultant Conflicts

Beginning January 1, 2013, public companies have to disclose compensation consultant conflicts of interest in proxy statements for annual stockholder meetings. A questionnaire should be sent to compensation consultants to discover if any conflicts of interest exist that need to be disclosed and assist in figuring out the best way to disclose them. This is a new requirement under the Dodd-Frank Act

## Intellectual Property & Technology: Online Contract Formation

A recent Second Circuit opinion held that an arbitration provision in an online contract was invalid because it was sent to program enrollees after enrollment, as part of an email that contained the programs terms and conditions. As such it was temporally and spatially decoupled from the enrollment. Also, the parties had no previous relationship to suggest that e-mail terms sent after enrollment were part of the contract. This case stands for the proposition that online terms and conditions have to be clear and conspicuous during purchase or registration.

## Labor & Employment: Supervisors Under The NLRA

Supervisors do not have the right to unionize and certain other rights under the National Labor Relations Act (“NLRA”). A recent Eleventh Circuit decision suggests steps employers can take to improve the likelihood that employees will qualify as supervisors, including revising job descriptions, performance evaluations and disciplinary procedures and policies to identify supervisors, clarify their autonomy and discretion and demonstrate their authority to discipline and evaluate, among other things.

## Labor & Employment: Employee Social Media Policies

Two recent decisions by the National Labor Relations Board have found that policies prohibiting certain conduct and communication by employees when using social media chilled or violated their rights under the National Labor Relations Act to (a) form, join, or assist a union, (b) choose representatives to bargain with an employer on their behalf, (c) act together with other employees for their benefit and protection, or (d) choose not to engage in any such activities. Among other things, prohibitions on discussing wages with other workers inhibited such rights.

We previously wrote about one of the opinions at issue [here](#).

## Litigation & ADR: New York Attorney Admissions

In house legal departments should be aware that new attorneys admitted in New York are required to perform 50 hours of pro bono work.

Exceptions apply for those already admitted, those eligible for admission because they are admitted in another jurisdiction and those admitted in another state who register as in house counsel in New York, but don't seek admission in New York.

## Litigation & ADR: Deciding Arbitrability

A Second Circuit decision addressed the issue of whether a particular dispute was subject to arbitration and serves as a reminder to review the rules incorporated by reference into an arbitration agreement, since they may determine arbitrability.

In *Schneider v. Kingdom of Thailand*, the Second Circuit held that there must be clear and unmistakable evidence that the parties intended to arbitrate a specific dispute and that this standard is met when the parties incorporate rules that provide for arbitration of questions of arbitrability. The UNCITRAL Arbitration Rules, which were incorporated by reference, did so.

Link to original article: <http://commercialcounselor.com/notes-for-general-counsel/>

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