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Analysis

NY Court Finds Name-Dropping Remains Protected in Art and Music

Attorneys for actress Lindsay Lohan recently sued hip-hop artist Pitbull, alleging that his use of her name in the lyric “So I’m tiptoeing to keep flowin’ / I got it locked up like Lindsay Lohan” in his song “Give Me Everything” violated New York’s Civil Rights Law by using her name for commercial benefit without written consent.

New York’s Civil Rights Law forbids the use of a person’s name for advertising purposes without written consent, write Venable partners **Amy Ralph Mudge** and **Randal M. Shaheen** in a recent post to Venable’s advertising law blog. However, the court cited a long line of New York precedents finding that New York’s law does not apply to works of art, including music.

In their post, Mudge and Shaheen ask whether such a clear distinction between art and advertising makes sense in today’s world and discuss the inherent difficulty in finding the line between commercial speech and speech protected by the First Amendment.

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

News

FTC Announces Staff Report on Mail or Telephone Order Merchandise Rule

On April 30, the Federal Trade Commission released a staff report on proposed amendments to the Mail or Telephone Order Merchandise Rule (MTOR) and called for interested parties to comment on the changes proposed in the report.

MTOR, which was issued in 1975, requires marketers who solicit customers via mail or telephone to have a reasonable basis for expecting that the sellers can ship within the advertised time frame, such as “allow 2-4 weeks for delivery.” If no time frame is specified, marketers must be able to ship the merchandise within 30 days. If sellers cannot ship within the promised time, they must obtain the buyer’s consent to delay. The FTC last sought comments on MTOR in 2007. Based on those comments, the Commission proposed amendments in 2011 to clarify:

- That MTOR covers orders placed over the Internet;
- That sellers may provide refunds and refund notices to buyers by any means at least as fast and reliable as first-class mail;
- Sellers’ obligations when buyers use payment methods, such as debit or pre-paid gift cards, that are not spelled out in MTOR; and
- How refunds are made to consumers who pay with third-party credit products, such as Visa or MasterCard cards, and credit products where the seller is the creditor.

The report details these recommendations that the Commission revise MTOR to respond to new methods



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of accessing the Internet and making payments and refunds. The FTC will accept comments on the report until July 15, 2013.

[Click here](#) to read the FTC's press release, access a copy of the FTC's staff report, and learn how to submit comments on the report.

FTC Solicits Comments on Proposed Changes to Textile Labeling Rules

Last week, the FTC announced proposed changes to its Textile Labeling Rules (the Rules), which require that certain textiles sold in the United States carry labels disclosing the generic names and percentages by weight of the fibers in the product, the name of the manufacturer or marketer, and the country where the product was processed or manufactured.

The FTC sought public comment on the current version of the Rules in November 2012. The proposed changes released last week take into consideration the comments received as a result of that request. Among the proposed changes to the Rules are changes that:

- Allow certain hang-tags that do not disclose the product's full fiber content information;
- Address labeling and disclosures in regard to trim pieces;
- Update guidance on the use of the terms "new" or "virgin" in conjunction with textiles; and
- Address advertising disclosures for textiles, including country-of-origin disclosures.

According to the FTC, the proposed changes are designed to make the rules more flexible and provide compliance options for companies without imposing significant new obligations. The FTC would like comments on the proposed changes as well as the costs and benefits of those proposed changes. Comments must be received by July 8, 2013.

[Click here](#) to read the text of the proposed changes.

FTC to Host Roundtable on Changes to Jewelry Industry Marketing Guides

The FTC will host a roundtable in its Washington, DC offices on June 19, 2013 to discuss possible changes to the Commission's "Guides for the Jewelry, Precious Metals, and Pewter Industries" (the Guides).

The Guides explain how marketers can avoid making deceptive claims about precious metal, pewter, diamond, gemstone, and pearl products, and provide guidance on making appropriate disclosures when marketing these products.

Last year, the FTC sought comments on the costs, benefits, necessity, and impact of modifying the Guides. It also solicited comments on possible modifications to the Guides. The roundtable will discuss those comments, as well as the marketing of alloy products containing precious metals in amounts below the Guides' minimum thresholds and surface applications of precious metals.

In preparation for the roundtable, the FTC has requested additional comments regarding specific questions to be addressed at the event, which are outlined in section 3 of the *Federal Register* notice announcing the roundtable. Comments on these questions may be filed until June 5, 2013.

[Click here](#) to read the text of the *Federal Register* notice announcing the roundtable and outlining the questions that will be discussed.

Upcoming Events

[New York City Bar Center for CLE - New York](#)

May 3, 2013

Please join Venable partner [Melissa Landau Steinman](#) when she presents "Sweepstakes, Promotions and Marketing Laws: Comprehension & Compliance." Topics of discussion will include the laws governing sweepstakes and skill contests, social media, mobile marketing, drafting official rules and disclosures, use of intellectual property, and the gift-card/coupon interface.

CLE credit is available.

[Click here](#) for more information and to register.

Merchant Acquirers' Committee 2013 Conference - Las Vegas

May 14-16, 2013

This year's MAC Conference is addressing "Controlling the Tidal Wave of Fraud." Please join Venable partner **Jamie Barnett, Rear Admiral (Ret.)** when he presents "Cyber Security and the Arrival of the Mobile Payments Era," a discussion of present threats from cyberspace. Also, Venable partner **Jeffrey D. Knowles** will present "Toto, We Are Not in Kansas Anymore," about regulatory and court challenges to payment companies.

[Click here](#) to register.

ERA'S Government Affairs Fly-In 2013 - Washington, DC

May 21-23, 2013

Please join Venable at the Electronic Retailing Association's 2013 Government Affairs Fly-In. The event presents an outstanding opportunity to learn more about the regulatory and legislative efforts affecting the electronic retailing industry and to meet with lawmakers and senior agency officials. Venable's **Jeffrey D. Knowles** will be among the dozen senior-level speakers from Capitol Hill, federal agencies, industry self-regulatory bodies, policy think tanks, and the electronic retailing industry.

[Click here](#) to learn more and to register.

Internet Retailer Conference and Exhibition 2013 - Chicago

June 4-7, 2013

The 9th annual Internet Retailer Conference and Exhibition, the world's largest e-commerce event, will analyze the social, mobile, global, personal, interactive, and managerial changes that e-commerce players are bringing to the new retail economy. Please join Venable attorneys at booth #464 to learn how Venable can help you grow your business and avoid the pitfalls of conducting commerce via the Internet.

[Click here](#) to register.

[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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