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ADVERTISING LAW

NEWSLETTER OF THE ADVERTISING, MARKETING & MEDIA PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

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Green Is So Appealing

"The marketing community has discovered the power of 'green marketing.' Over the last year, brands have invested heavily in advertising devoted to promoting products, services and brands as being 'eco-friendly,' 'carbon-neutral' and environmentally 'sustainable,' among other environmental buzzwords." In the September 15, 2008 issue of the *New York Law Journal*, Manatt partners Christopher A. Cole and Linda A. Goldstein explain that marketers' intense focus on environmental issues has outpaced the development of regulation, but the gap may be narrowing. For a complete copy of the article, click [here](#).

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Court Throws Out Copyright Case Against Veoh

Veoh Networks Inc. has won a copyright infringement case brought by an adult entertainment company.

A federal court in San Francisco granted summary judgment to Veoh, a start-up video-sharing site with high-profile Hollywood backers, dismissing a complaint by Io Group Inc. alleging that Veoh had not done enough to prevent users from uploading pirated clips of 10 pornographic films owned by Io.

The court found that Veoh adequately protected the rights of copyright owners and thus was covered by the "safe harbor"

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

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October 22, 2008
D.C. Bar CLE Seminar

Topic:
"Copyright Law and Litigation"

Kenneth M. Kaufman

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

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

Topic:
"Navigating the Potholes: The Evolving Landscape for

of the Digital Millennium Copyright Act, or DMCA.

"The DMCA was intended to facilitate the growth of electronic commerce, not squelch it," the court wrote.

The DMCA exempts from liability Internet service providers that act to block pirated materials after receiving notice from the copyright owner of specific acts of infringement.

The court rejected Io's contention that Veoh should prescreen videos to avert copyright infringement. "[N]o reasonable juror could conclude that a comprehensive review of every file would be feasible," the court wrote. It also threw out Io's claim that Veoh violated its copyrights by automatically converting user-submitted videos into Flash, a process known as transcoding.

The court also noted that before Io filed suit, Veoh already had elected to ban all adult sexual content from its site and had taken down the infringing Io videos. Moreover, Io did not notify Veoh of the infringing materials before bringing its case.

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Target Settles Class Action by Blind for \$6 Million

Target Corp. will pay \$6 million to settle a class action brought by the National Federation of the Blind, a leading advocate for blind people.

The case was brought in California on behalf of sightless people who were unable to access the retailer's Web site.

Under the settlement announced August 27, Target will put \$6 million in an interest-bearing account to pay for claims by members of the class. Target also has pledged to prepare and implement guidelines for making its site more accessible to the blind by early next year.

The NFB will periodically test the site over the next three years to ensure its accessibility to the blind. The advocacy group said that once the improvements are in place, it will certify the site through its own program.

The NFB sued Target in 2006 in California state court under the Americans With Disabilities Act, a 1990 law requiring retailers and other owners of public places to accommodate the disabled. Target had argued that the law only applied to

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

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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](#)

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OUR PRACTICE

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physical spaces.

NFB spokesman Christopher Danielsen said when the suit was filed two years ago, Target's site was more difficult for blind people to navigate than other similar retailer sites. He said many of the links on Target's site could not be read by screen reading software, which converts written words into speech. He said that since then, Target has made progress on this front, and the NFB is looking forward to cooperating with Target to make additional improvements.

Target.com president Steve Eastman said in a statement that "as the company's online business has evolved, we have made significant enhancements in order to provide an accessible shopping experience."

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UK Bans iPhone Ad

The UK's ad watchdog has banned an ad for the iPhone that claims the device provides access to "all parts of the Internet."

In the television spot, a person clicks through web pages on an iPhone while a voice-over says, "You never know which part of the Internet you'll need. The 'do you need sun cream' part? The 'what's the quickest way to the airport' part? The 'what about an ocean view room' part? Or the 'can you really afford this' part? Which is why all the parts of the Internet are on the iPhone."

Two objections were filed with the Advertising Standards Authority arguing that the ad was misleading because the iPhone lacks Flash and Java, and not all Web sites can be seen in their entirety.

Apple countered that the "all parts of the Internet" claim referred to the device's ability to offer "full" Internet access, versus WAP pages, or walled-garden operator content.

In its ruling, the ASA said that Apple "believed the ad was not about technical details or the functionalities or plug-ins that were available on the iPhone, but the varied Web sites that users could visit and utilize. They said all the Web sites featured in the ad were available on the iPhone and were shown as they would be seen by the user. They said none of the content in the ad was Flash or Java-based and the ad did not mention any other technical capabilities of the iPhone."

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The ASA rejected Apple's position and upheld the complaints. It found that phrases such as, "You'll never know which part of the Internet you'll need" and "All parts of the Internet are on the iPhone," in conjunction with the omitted limitations regarding Flash and Java, would lead consumers to think they could access all Web sites as they would see them on a personal computer.

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