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**Honors and Awards**

Top ranked in *Chambers USA*

**Analysis****FTC's Green Guides: What You Need to Know**

On October 1, the Federal Trade Commission (FTC) released the long-awaited final version of its revised *Guides for the Use of Environmental Marketing Claims*. The good news, write Venable attorneys **Leonard L. Gordon**, **Amy Ralph Mudge**, **Randal M. Shaheen** and **Maura A. Marcheski** in a recent post to Venable's advertising law blog, is that the release of the so-called Green Guides just made it a little easier for companies to be "green."

To commemorate the release of the guides, Jim Kohm, Enforcement Division Director at the FTC's Bureau of Consumer Protection, unveiled the final revised Green Guides and discussed the FTC's thinking during a session at the Council of Better Business Bureaus, National Advertising Division (NAD) conference on October 1. According to the Venable attorneys, the key take-aways from Mr. Kohm's presentation are these:

- The FTC is not looking to play "gotcha" with the guides for companies that are legitimately trying to advertise in good faith and stay on the right side of the line. If you inadvertently step over the line they will try to work with you to bring you back over.
- The FTC does not set environmental policy; its goal is to avoid having the field polluted by deception and maintain the integrity of "green" claims.

The post goes on to outline areas where the FTC's guidance in the final revised Green Guides is significantly different from the draft guides released two years ago. Those areas include: general environmental claims; carbon offsets; seals and certificates of approval; compostable, biodegradable and recyclable claims; "free of" claims; and nontoxic claims.

The Venable attorneys also note that although the FTC declined to address the use of "natural" or "sustainable" claims in the guides, marketers should not hold their collective breath for additional guidance. During his comments at the NAD conference, Mr. Kohm indicated that the revision of the Green Guides was a massive undertaking. He told the audience that although there may be small modifications made from time to time, the FTC does not intend to perform a top-to-bottom review of the guides for another 10 years.

[Click here](#) to read the full post on Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

[Click here](#) to view the FTC's press release and access a copy of the final revised Green Guides.

**Marketing to Teens and Tweens Is Anything but Child's Play**

Teens, tweens and even younger children now have far more influence over American families' purchasing decisions than they used to, write Venable partners **Amy Ralph Mudge** and **Gregory J. Sater** in the October 2012 issue of *Electronic Retailer* magazine. And, they say, this trend is only likely to continue and intensify.

Marketing directly to this audience now makes more sense than ever, but marketers need to understand the legal principles that apply when marketing to these emerging consumers. The good news, Mudge and Sater write, is that the regulations for marketing to teens and tweens are not radically different from the rules of the road for advertising in general. However, there are several heightened considerations.



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



Top-Tier Firm *Legal 500*



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The pair provides a primer on these considerations, including issues pertaining to disclosures, food advertising, use of celebrity endorsers, the content of the advertisement's call to action, obtaining parental consent and data collection.

[Click here](#) to read the full article in the October 2012 issue of *Electronic Retailer*.

## FTC's Green Guides: "Qualify Those Stinkin' Badges"

Venable Partner **Gary D. Hailey** writes in a recent piece that environmentally-related or "green" certificates and seals of approval are an area of significant focus in the just-released final version of the FTC's *Guides for the Use of Environmental Marketing Claims* (Green Guides).

In the piece, Hailey outlines the five distinct parts of the section of the Green Guides that deals with the use of environmental certifications and seals of approval. Below are brief summaries of each section.

It is deceptive to claim that a product, package, or service has been endorsed or certified by an independent, third-party organization when it has not.

The advertiser's use of the name, logo, or seal of approval of a third-party certifier may be considered an endorsement and could, therefore, be subject to the criteria set forth in the FTC's *Guides Concerning Use of Endorsements and Testimonials in Advertising*. If a seal of approval does constitute an endorsement and there is a "material connection" between the certifier and the advertiser, the advertiser should disclose that connection. Generally speaking, Hailey says, a payment for the right to use a seal of approval does not constitute a "material connection."

A third-party certification does not necessarily provide the necessary substantiation for all of the claims that the mention of the certification in an advertisement may communicate. Under the Green Guides, the advertiser is responsible for determining what claims are communicated by a reference to an environmental certification or seal of approval in its advertising, and ensuring that the certification adequately substantiates its claims.

Advertisers should avoid the use of broad, unqualified certifications or seals of approval because they likely convey a general environmental benefit claim. Hailey points out that the FTC believes it is "highly unlikely" that such broad claims can be fully substantiated.

Any language qualifying a general environmental benefit claim that is communicated by a certification or seal of approval should be, according to the Green Guides, "clear and prominent." The Green Guides also note that qualifications should clearly convey that the certification or seal of approval refers only to specific and limited benefits.

[Click here](#) to read Hailey's piece, which provides a more detailed explanation of each of the sections and a discussion of each of the eight explanatory examples included in this section of the Green Guides and the implications of that section for advertisers and third-party groups (including nonprofits and industry associations) that may develop and administer environmental certification or seal of approval programs.

## CFPB's Start-up Style Is No Laughing Matter

What do The Daily Show, The Colbert Report, and the Consumer Financial Protection Bureau (CFPB) have in common? asks Venable attorney **Jonathan L. Pompan** in a recent post to Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com). While executives at the broad array of companies now subject to oversight by the agency may hope the answer is a sense of humor, Pompan, citing a recent *Washington Post* story, says the answer is that there is at least one Web designer who has worked at all three places. That designer is indicative of the unusual team of government employees at the CFPB.

According to Pompan, the CFPB has become known as a "Beltway Start-up" with access to close to a half-billion-dollar budget and more than 1,000 employees. Now at the start of its second year, the CFPB has a list of accomplishments that includes enforcement actions, rulemakings in the areas of nonbank supervision and examination, mortgage servicer reform and shining a light on financial services for servicemembers and seniors.

The article, Pompan writes, details the CFPB's use of a "classic start-up style" and attributes the CFPB's "beta" projects to an approach that encourages staff to work quickly and make corrections later. The approach, he says, is as good an explanation as any for the CFPB's practice of often placing proposals

on its website without always simultaneously utilizing the Federal Register and the notice and comment process provided for in the Administrative Procedures Act.

Instead, CFPB proposals like sample disclosures for student loans, mortgage servicers, and other initiatives like a draft Strategic Plan sometimes seem to only exist on the Web. And, comments from the public are sometimes limited to the arbitrary length of intake forms on the CFPB website.

Pompan writes that the CFPB website provides a window into an area that matters very much but is easily underestimated. For affected companies and other stakeholders, the "beta" approaches and CFPB website are no laughing matter.

[Click here](#) to read Pompan's full post on Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

[Click here](#) to read the *Washington Post* story.

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## Upcoming Events

### International Association of Privacy Professionals Privacy Academy - San Jose, CA

October 10-12, 2012

Privacy experts are headed to Silicon Valley to receive practical instruction and meaningful discussion on today's hottest privacy issues. Venable partner [Emilio W. Cividanes](#) will present "Courtroom Showdown," a mock trial set in the fictional "Data Security Breach Tribunal of the United Nations," on Wednesday, October 10 from 8 a.m. to 12 p.m. PDT.

To register, please [click here](#).

### Online Marketing Summit - Santa Clara, CA

October 22-25, 2012

The Online Marketing Summit connects marketers with the knowledge, experts and technologies that are transforming digital marketing and business. Please join Venable attorney [Michael A. Signorelli](#) as he presents "Privacy Forward: Engaging Consumers in a Privacy-Sensitive Manner," on the subject of online behavioral advertising, on Tuesday, October 23 from 2:00 p.m. to 2:30 p.m. PDT.

To register for the Summit and receive a 25% discount as a guest of Venable, please [click here](#). The discount will be automatically applied.

### ad:tech New York - New York City

November 7-8, 2012

ad:tech spans the full ecosystem of advertising, digital marketing and technology that moves business forward. Please join Venable attorneys at our booth on the show floor, #1735.

To register, please [click here](#).

### 34th Annual Promotion Marketing Association Marketing Law Conference - Chicago

November 12-14, 2012

Venable is proud to sponsor the PMA Marketing Law Conference, featuring the nation's leading speakers from the Marketing and Advertising Law Bar and from major brands and prominent regulators. Venable partner [Melissa Landau Steinman](#) serves as co-chair and will present a session on gift cards and coupons. Joining her as speakers at the conference are Venable partner [Roger A. Colaizzi](#), who will address class action and governmental investigation defense, and Venable partner [Leonard L. Gordon](#), whose topic is telemarketing law enforcement.

Please join Venable at PMA. To register, please [click here](#).

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Visit Venable's advertising law blog at [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

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