



August 15, 2013

Issue Editors

Jeffrey D. Knowles
jdknowles@Venable.com
202.344.4860

Roger A. Colaizzi
racolaizzi@Venable.com
202.344.8051

Gary D. Hailey
gdhailey@Venable.com
202.344.4997

Gregory J. Sater
gjsater@Venable.com
310.229.0377

In This Issue

Jeffrey D. Knowles
jdknowles@Venable.com
202.344.4860

J. Douglas Baldrige
jbaldridge@Venable.com
202.344.4703

Ashley W. Craig
awcraig@Venable.com
202.344.4351

Lisa Jose Fales
ljfales@Venable.com
202.344.4349

Claudia A. Lewis
calewis@Venable.com
202.344.4359

Lindsay B. Meyer
lbmeyer@Venable.com
202.344.4829

Amy Ralph Mudge
amudge@Venable.com
202.344.4743

Randal M. Shaheen
rmshaheen@Venable.com
202.344.4488

Michelle C. Jackson
mcjackson@Venable.com
202.344.4492

Register Now for ERA D2C Convention

Venable is a proud sponsor of the Electronic Retailing Association's D2C Convention on September 24-26, 2013 in Las Vegas. Please join our attorneys as they host the Pre-Moxie Awards reception, present two educational sessions, and honor Venable partner **Jeffrey D. Knowles**, recipient of the 2013 ERA Lifetime Achievement Award.

To obtain a discounted exhibit hall pass that will allow you access to the expo as a Venable guest, [click here](#) and register using the code **EI320D26**.

News

NAD Has FTC's Number...And is Not Afraid to Use It

Twice in August, the National Advertising Division of the Council of Better Business Bureaus (NAD), a component of the Advertising Self-Regulatory Council (ASRC), has referred two well-known national brands to the Federal Trade Commission (FTC). The self-regulatory body has the power to refer a marketer to the FTC when it either refuses to participate in the advertising review process or fails to make a good-faith effort to comply with NAD's recommendations.

On August 1, NAD announced that it had referred enterprise computing company Oracle to the FTC because the company had failed to comply, on four separate occasions, with the self-regulator's recommendations that the company should discontinue unsubstantiated comparative product-performance claims. Oracle maintained that NAD had "failed to take into account the sophistication of the ad's target audience," and appealed three of the decisions to the National Advertising Review Board (NARB), which upheld each of NAD's decisions.

On August 13, NAD referred brewer MillerCoors to the FTC after the company declined to participate in the review of advertising that appeared on cans of Coors Light beer. MillerCoors called the challenge, which was brought by competitor Anheuser-Busch, "frivolous," and said that all challenged claims were either puffery or literally truthful. The company also stated that the campaign in question is scheduled to be discontinued by September 2013.

In a story about the Oracle matter, ASRC spokesperson Linda Bean told *InformationWeek* that the self-regulatory body refers "a handful of cases" to the FTC each year. She added that the mere referral sometimes spurs companies to change direction and participate in the self-regulatory process. Other times, she said, the FTC may open its own investigation into the challenged advertising claims.

[Click here](#) to read NAD's press release about the Oracle matter.

[Click here](#) to read the *InformationWeek* story about the Oracle matter.

[Click here](#) to read NAD's press release about the MillerCoors matter.

Venable Obtains Decisive Victory for Email Advertisers and Marketers

Venable attorneys **J. Douglas Baldrige**, **Ari N. Rothman**, and **Lisa Jose Fales** recently secured a federal court victory for Connexus Corp. when the judge ruled that Beyond Systems, Inc. (BSI) is barred

Matthew R. Rabinowitz
mrrabinowitz@Venable.com
202.344.4228

Ari N. Rothman
anrothman@Venable.com
202.344.4220

Honors and Awards

Top ranked in *Chambers USA*
2013



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



Top-Tier Firm *Legal 500*

For more information about Venable's award-winning Advertising and Marketing practice, please visit our website at www.Venable.com/Advertising-and-Marketing

from pursuing claims for alleged violations of the California and Maryland anti-spam statutes. The judge's ruling that BSI lacks standing to sue as an Internet service provider and consented to receive the emails over which it sued the defendants prevents the case from moving forward.

"The court's ruling will allow legitimate companies like Kraft Foods and Connexus to continue advertising by email without the threat of opportunistic plaintiffs disrupting their businesses by filing frivolous lawsuits to game the system," Rothman said in a Venable press release.

The ruling is important to email marketers and advertisers because it holds that a purported Internet service provider that in actuality exists primarily and substantially to file anti-spam lawsuits, and an Internet service provider that has consented to receive the emails over which they then have filed a lawsuit, cannot maintain claims under the California or Maryland anti-spam statutes.

[Click here](#) to read the full text of the press release, which details each aspect of the case concerning the federal and state anti-spam statutes.

Analysis

More on Understanding the FDA's Proposed Rules for Food Importers

The article in last week's newsletter about the Food and Drug Administration's (FDA) proposed Foreign Supplier Verification Programs (FSVP) rules generated tremendous interest among readers, setting an all-time record for clicks on an individual story. With approximately 15 percent of all food consumed in the United States coming from overseas, it is clear why so many marketers and importers of food and dietary supplement products have an interest in the proposed rules.

Because of that interest, Venable attorneys [Ashley W. Craig](#), [Claudia A. Lewis](#), [Lindsay B. Meyer](#), [Michelle C. Jackson](#), and [Matthew R. Rabinowitz](#) have followed up on their original client alert with a more detailed analysis of the FSVP rules' proposed requirements, compliance options, and exemptions.

[Click here](#) to read the Venable team's detailed analysis of the proposed rules.

The World's Best Blog Posts on Puffery

Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) analyze recent NAD cases involving advertising claims by Tropicana and Starbucks in a recent two-part series on Venable's advertising law blog, www.allaboutadvertisinglaw.com. The series discusses the risks of relying on the "puffery" defense without a back-up plan, as well as what these recent decisions may indicate about NAD's current thinking about puffery.

[Click here](#) to read part 1 of the series, which discusses the Tropicana matter.

[Click here](#) to read part 2 of the series, which discusses the Starbucks matter.

Upcoming Events

Webinar: "The Mobile Payment Phenomenon: Legal and Regulatory Issues" for ALI CLE

August 29, 2013 | 1:00 p.m. - 2:30 p.m. EDT

Mobile payments are growing in popularity and the trend is likely to accelerate as more consumers use smartphones and tablets to transfer funds to people and businesses. If you missed the first CLE webinar on mobile payments, register for this fast-paced, 90-minute replay with Venable partners [John B. Beaty](#), [Frederick "Rick" Joyce](#), and representatives from the U.S. Department of Treasury and Electronic Transactions Association, who will explain the risks and supervisory issues associated with this new financial service.

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

Teleconference: "ABA Antitrust Section Corporate Counseling Update"

September 10, 2013 | 12:00 p.m. - 1:00 p.m. EDT

Join Venable attorneys at the ABA Antitrust Section Corporate Counseling for its monthly Antitrust Update for In-house Counsel, a telephonic committee program. This program continues the ABA's popular monthly brown bag series in which antitrust practitioners report on the most recent developments around the world at antitrust agencies and in the courts.

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

Council for Responsible Nutrition Workshop and Conference 2013 - Park City, UT

September 18-21, 2013

The Council for Responsible Nutrition (CRN) is the leading trade association representing dietary supplement manufacturers and ingredient suppliers. During CRN's dietary supplements conference, Venable partner **Claudia A. Lewis** will join a panel to discuss "How Non-compliance with FDA Regulations Can Result in a Private Cause of Action for Consumers." Venable is also a proud sponsor of the invitation-only Board of Directors dinner.

[Click here](#) to learn more.

NAD/CARU/ERSP Annual Conferences - New York City

September 30-October 2, 2013

The Advertising Self-Regulatory Council establishes the policies and procedures for advertising industry self-regulation, including the National Advertising Division (NAD), Electronic Retailing Self-Regulation Program (ERSP), and Children's Advertising Review Unit (CARU). Venable attorney **Mikhia E. Hawkins** will join a panel during the ERSP Summit titled "Direct Response: A Year in Review & What's to Come." Timely topics that will be discussed include recent developments and issues in direct response advertising and marketing, various considerations of claim substantiation, and self-regulation's role in the evolving electronic retailing industry.

[Click here](#) to learn more.

[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.

CALIFORNIA DELAWARE MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | www.Venable.com

© 2013 Venable LLP. This alert is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address. ATTORNEY ADVERTISING.

[Click here to unsubscribe](#)

575 7th Street, NW, Washington, DC 20004

© 2013 Venable LLP | www.Venable.com | 1.888.VENABLE