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### **Alan Brunswick, L. Peter Parcher, Lee Phillips and Jordan Yospe Named to The Hollywood Reporter's Power Lawyers Top 100**

Four Manatt, Phelps & Phillips, LLP, lawyers were honored by *The Hollywood Reporter* in the publication's third annual "Power Lawyers: The 100 Most Influential Attorneys in Entertainment" issue. Alan Brunswick, L. Peter Parcher, Lee Phillips and Jordan Yospe were included among the industry's top legal professionals.

The Power Lawyers list, according to *The Hollywood Reporter*, is a definitive reference guide for the industry. "In a down economy," the publication notes, "a tenacious entertainment lawyer is more important than ever."

Mr. Brunswick, based in Los Angeles and chair of Manatt's firmwide entertainment practice group, was noted for his significant work in the labor category, particularly for his work guiding producers, law firms, new media production companies and talent agencies as they traverse the myriad issues



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#### UPCOMING EVENTS

September 24, 2009

From The Source: AAF's Web  
Seminar Series

presented by the Writers Guild of America strike and the de facto strike that accompanied Screen Actors Guild negotiations. Mr. Brunswick has been named to the prestigious list three times, each year since its inception.

Mr. Parcher, a partner in the firm's New York office, was honored in the litigation arena. In particular, the publication noted his victory on behalf of a class of more than 2,000 retired football players in their suit against the NFL players union. Class representative, former Green Bay Packer and NFL Hall of Famer Herb Adderley was there for the courtroom win. "The jury came in with their verdict and he hugged me," Mr. Parcher told the publication. "He said we gave him back his dignity." The jury award was in excess of \$28 million. This is Mr. Parcher's third time on *The Hollywood Reporter's* Power Lawyers roster.

Lee Phillips, a name partner practicing in Los Angeles, was honored for his work with talent. *The Hollywood Reporter* characterized Mr. Phillips' work with music industry legends, rather than chasing flavor-of-the-month artists, as being particularly astute as the broader music business struggles. Mr. Phillips' clients, including Barbra Streisand, Brian Wilson, Burt Bacharach, and the Eagles, and their deep publishing catalogs, are called out as being "one of the few bright spots for the industry." Mr. Phillips was named a Power Lawyer first in 2007 when the publication debuted the list, and has appeared among the top 100 every year since.

Jordan Yospe, counsel in the firm's Los Angeles office, was included for a second year in the corporate category and recognized for his work integrating brands into new and traditional media. Mr. Yospe was formerly general counsel of Mark Burnett Productions. At Manatt, clients "rely on his expertise and hard work to keep the integrity of their brands," the publication said. *The Hollywood Reporter* noted that brand integration is a growth area in a down market, and that Mr. Yospe is busier than ever managing deals from both the brand and production perspectives. When not shepherding deals "I'm reading scripts," he said.

The four Manatt lawyers were honored at a gala breakfast on July 24, 2009, at the Peninsula Hotel in Beverly Hills.

To read the full article, click [here](#)

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## Officials Say Craigslist Still Hosts Sex Ads

Some two months after Craigslist said it would work to eliminate sex ads from its classified ad Web site, law enforcement officials claim that the site continues to post listings by prostitutes.

Topic: "Budget Busters: Bongs, Blogs and Brand Wars"

Speaker: [Jeff Edelstein](#)

[for more information](#)

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October 5-6, 2009

NAD Annual Conference 2009

Moderator: [Jeff Edelstein](#)

W Hotel

New York, NY

[for more information](#)

...

October 27, 2009

American Conference  
Institute's 3rd Annual Forum

In response to criticism and adverse publicity generated from the fatal shooting of a woman who placed an ad on the site, Craigslist announced in May that it would replace its “erotic services” category—along with the most graphic photographs—with an “adult services” category. Craigslist also pledged to prescreen all submissions to the new section and charge a fee.

Cook County Sheriff Tom Dart sued the San Francisco-based company earlier this year, calling it the country’s biggest source of prostitution. Dart’s lawyer said Craigslist’s lawyer told him the changes would moot the lawsuit and suggested Dart drop it. But Dart says that sex is still being sold on the site and suggests that Craigslist could do more to clean up its act. He says he will continue to pressure the site to do so.

Craigslist CEO Jim Buckmaster countered Dart’s charges. “The citizens of Cook County would arguably be better served if their sheriff spent his time addressing actual crime, rather than using the courts to generate personal publicity,” he wrote in an e-mailed statement.

Connecticut Attorney General Richard Blumenthal is also pressuring Craigslist to provide information about its monitoring and screening practices, including how many monitors it uses, their qualifications, and the kinds of ads the site rejects. Blumenthal said Craigslist has responded to his requests, although he would not elaborate on what the company has told him. He added that a coalition of 40 attorneys general was weighing its options and expects to announce its next move shortly.

Craigslist also has a lawsuit pending against South Carolina Attorney General Henry McMaster for allegedly violating its employees’ constitutional rights by threatening to prosecute prostitution-related ads. McMaster has asked a federal judge to dismiss the company’s complaint against him, arguing that “Neither Plaintiff nor the users of its websites have a constitutionally protected right to post such advertisements.” In May, McMaster gave Craigslist ten days to remove ads for prostitution and pornography from its South Carolina Web sites or face possible charges. McMaster said subsequent changes by Craigslist were not enough and he still intended to charge executives with aiding and abetting prostitution if an ad led to a South Carolina prostitution case. After demanding an apology, Buckmaster sued McMaster.

**Why it matters:** Buckmaster and Craigslist argue that threats of prosecution violate employees’ constitutional rights to free speech and personal liberties, and that Craigslist is unfairly being singled out for prosecution among the myriad of Web sites containing similar material. Government officials counter that, by knowingly hosting listings selling prostitution, Craigslist is aiding and abetting a criminal activity.

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on Sweepstakes Contests and Promotions

Speaker: [Linda Goldstein](#)

The Carlton Hotel

New York, NY

[for more information](#)

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November 5-6, 2009

31st Annual Promotion Marketing Law Conference

Topic: "The Battle of the Brands"

Moderator: [Chris Cole](#)

Fairmont Hotel

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## FTC Testifies About Efforts to Battle Deceptive Ads

**The Federal Trade Commission testified late last month at a U.S. Senate hearing on its efforts to tackle deceptive advertising in the face of rapid changes.**

In testimony before the Senate Committee on Commerce, Science, and Transportation's Subcommittee on Consumer Protection, Product Safety, and Insurance, David Vladeck, Director of the FTC's Bureau of Consumer Protection, made a pitch for more funding. He said the job of overseeing and going after false advertising claims has gotten bigger, while the agency's budget has not.

"The task of monitoring and pursuing false and deceptive advertising claims has grown larger and more complex over the past few decades," Vladeck testified. "Significantly, however, the Commission's resources to tackle deceptive advertising, as well as the other important consumer issues addressed by the agency's Bureau of Consumer Protection, have not increased enough."

Among the advertising-related issues the agency is facing, Vladeck singled out health and safety claims, the use of endorsements and testimonials, environmental marketing, or "green" claims, and scams that prey on the economic woes of consumers. On the health and safety front, in the past year, the FTC has gone after claims for weight loss, cold prevention, and diabetes and cancer "cures." Vladeck also talked about the agency's effort to update its 1980 Guides Concerning the Use of Endorsements and Testimonials in Advertising to address changes over the past three decades in how products are marketed, such as program-length infomercials, online ads, word-of-mouth or viral marketing, and consumer blogs. Notably, Vladeck opined that "results not typical" and other disclaimers of typicality commonly used in endorsements and testimonials are not working as intended to prevent consumer deception.

Vladeck also testified that the growing number of companies touting their products as "green" has spurred the FTC to review its environmental marketing guidelines, called the Green Guides. In its most recent enforcement action, the agency charged three companies with making false claims that their products – disposable plates, wipes, and towels – were "biodegradable." Two of the cases have settled, and the third is in litigation, Vladeck said.

Vladeck also talked about the agency's battle against scammers preying on consumers in financial distress. In July, the Commission announced "Operation Short Change," a joint initiative with 14 states, the Justice Department, and more than 120 law enforcement actions. So far, the FTC has filed eight new cases against alleged scammers, and taken action in

November 5-6, 2009

31st Annual Promotion

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Topic: "Sweepstakes & Contests: Lend Me Your Ear and I'll Sing You a Song..."

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### Our Practice

Whether you're a multi-national corporation, an ad agency, a broadcast or cable company, an e-commerce business, or a retailer with Internet-driven promotional strategies, you want a law

seven additional cases challenging similar misconduct. The agency alleged that these schemes, promoted online and via misleading infomercials, have scammed hundreds of thousands of consumers out of about \$300 million.

**Why it matters:** The Obama administration has pledged to boost efforts to combat false and misleading advertising and President Obama's appointment of David Vladeck as Director of the FTC's Bureau of Consumer Protection is a clear signal that the administration intends to do so. However, like every agency, the FTC is dependent on Congress for its funding, and Vladeck's testimony is clearly aimed at a bid for more funding for his agency.

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## Ocean Spray Loses Bid to Dismiss Pom Wonderful Litigation

**A federal court has denied a motion by beverage maker Ocean Spray Cranberries, Inc., to dismiss a false advertising complaint by Pom Wonderful, the biggest grower and distributor of pomegranates and pomegranate juice in the United States.**

Pom sued Ocean Spray in January, alleging that it fraudulently marketed a new product as a cranberry-pomegranate blend when it was actually composed of "economically and nutritionally inferior juices such as grape and apple."

The federal court in Los Angeles rejected Ocean Spray's argument that Pom's claims were preempted by federal labeling rules issued by the Food and Drug Administration. "Congress did not intend federal law to exclusively occupy the fields of food labeling and advertising," the court wrote.

**Why it matters:** Although the exclusivity of the Food and Drug Administration's authority over health claims by food products is open to interpretation, most of the courts have found that such claims are not subject to preemption.

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## Telemarketer Gets Five-Year Ban for Violating Do Not Call Rules

**A financial services telemarketer has been banned from calling consumers for five years as part of a settlement of Federal Trade Commission charges that it violated Do Not Call regulations.**

In November 2007, the FTC charged Global Mortgage Funding, Inc. and

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owner Damian Robert Kutzner with placing telemarketing calls to phone numbers listed on the National Do Not Call Registry. The seller of mortgages and other financial services was also charged with failing to provide accurate caller ID information, failing to pay fees required to access the Registry, and failing to connect consumers to a representative within two seconds of answering a call.

Under the settlement announced on July 29, 2009, Kutzner and anyone working with him are banned from telemarketing or assisting other telemarketers for five years. It also permanently bans Kutzner from violating the Telemarketing Sales Rule or Do Not Call provisions, including calling consumers on the National Do Not Call Registry, failing to provide accurate caller ID information, calling consumers who have said they do not want to be called, and abandoning calls.

The order imposes a \$6 million fine against Kutzner and Global Mortgage, which has been suspended due to their inability to pay. Both defendants have filed for bankruptcy. The order also imposes reporting and recordkeeping provisions to help monitor Kutzner's compliance and ensures that Global Mortgage will not resume business or benefit from its past conduct.

The FTC sued both Global Mortgage and Kutzner before, for allegedly sending "spoofed" e-mails that offered mortgages and purported to be from legitimate banks. That case settled in 2003 for \$60,000 in fines.

**Why it matters:** Typically, telemarketers who violate the Do Not Call rules are fined, but not banned from conducting legal telemarketing. The harsh five-year ban in this case may signal that the FTC plans to crack down harder on illegal telemarketing. On the other hand, the ban may have been prompted by Kutzner's prior alleged illegal activities, or his inability to pay a fine.

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## **Vegan Group Wants Warning on Hot Dogs**

**“Warning: Consuming hot dogs and other processed meats increases the risk of cancer.”**

That is the label a vegan advocacy group wants to appear on packages of hot dogs sold in the state of New Jersey.

On June 22, 2009, a nonprofit group called The Cancer Project filed a lawsuit in New Jersey state court, that, if successful, would force hot dog producers to place cancer-risk warning labels on packages sold in New Jersey.

The defendants in the lawsuit, which seeks class action status, include Nathan's Famous, Inc.; Oscar Mayer owner Kraft Foods Inc.; Sara Lee Corporation; Marathon Enterprises, Inc.; and ConAgra Foods, Inc., which owns Hebrew National.

Americans spent \$3.4 billion on 730 million packages of hot dogs and sausages last year, according to the National Hot Dog & Sausage Council.

The Cancer Project is part of the Physicians Committee for Responsible Medicine, a group that opposes animal research and advocates veganism, or diets that do not include animal products.

The lawsuit argues that nitrites—the preservatives used in hot dogs and other cured and processed meats—cause the development of cancer-forming agents. During the digestive process, nitrites break down into nitrosamines and other N-nitroso compounds that are considered carcinogens. Although some studies link red and processed meats to cancer risks, it is not clearly established whether the culprit is nitrites or other factors such as high fat content. While acknowledging that uncertainty exists, the lawsuit argues that it does not obviate the need for the warning.

The National Hot Dog & Sausage Council, an industry group, says many other studies contradict the findings in the lawsuit.

**Why it matters:** It seems unlikely that the lawsuit will succeed, but that may not be the point. Warning labels are the province of government regulators, not state courts. The Cancer Project's lawsuit is probably aimed at generating awareness of the potential dangers of hot dogs. Whether the publicity it generates for the group's cause will matter, however, remains to be seen, since most people know hot dogs aren't health food, but they eat them anyway, because they taste good.

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## **Ad Campaign Says Bottled Water Companies Spread Lies**

**Tappening, a company that makes water bottles, has launched an ad campaign called “Lying in Advertising” that accuses bottled water companies of lying to the public.**

The posters feature outlandish claims like “Bottled Water Makes Acid Rain Fall on Playgrounds” and “Bottled Water: 98% Melted Ice Caps. 2% Polar Bear Tears.” In smaller text at the bottom, the posters read, “If bottled water companies can lie, we can too.”

Eric Yaverbaum, a cofounder of Tappening and chief executive of the public relations firm Ericho Communications, says the statement is based on

charges that some beverage companies did not explain that their water was sourced from municipal tap water. Yaverbaum and cofounder Mark DiMassimo, the chief executive of the advertising agency DIGO Brands, started Tappingen about two years ago, each contributing \$100,000 toward a Web site, ad campaigns, and the production of reusable bottles. Yaverbaum says Tappingen has sold about \$5 million worth of the bottles, and reinvests profits in additional bottle production and advertising.

For the most recent campaign, Tappingen has budgeted \$535,000 on outdoor posters in New York, Los Angeles, Las Vegas, Chicago, and Miami, along with an online component. The ads encourage consumers to go to [Tappingen.com](http://Tappingen.com) to learn “the truth” about bottled water, or to [StartALie.com](http://StartALie.com) to spread a lie.

Yaverbaum argues that tap water is cheaper and more environmentally sound than bottled water, which requires the use of nonbiodegradable plastic bottles, trucking, and refrigeration. He claims he and DiMassimo are more interested in getting out their environmental message – and flexing their marketing muscle – than selling bottles.

International Bottled Water Association chief executive Joseph Doss took issue with the ads. “We certainly would disagree with the premise that bottled water companies lie in their advertising. Like all products, bottled water ads must be truthful and nonmisleading,” he told *The New York Times*.

Doss added that people buy bottled water for the convenience and that the industry considers its competition to be “soft drinks, sodas, juices, teas,” not tap water. “To the extent that people are doing things to discourage people from drinking a healthy product, I just don’t see how that’s in the public interest,” Doss said.

**Why it matters:** Bottled water has become an environmental flash point, targeted as wasteful and polluting, as well as allegedly guilty of dubious purity claims. Under FDA rules, bottled water sourced from a community or municipal water system – some 25 percent – must state this on the label, unless the water is distilled, deionized or subject to reverse osmosis.

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## **Nestlé Wants Muscle Milk to Change Its Name**

**Nestlé USA is charging the maker of Muscle Milk, a nutritional drink aimed at athletes, with deceptively naming and marketing the brand, because it does not actually contain milk.**

Nestlé, which makes Nesquik, Carnation, and other milk-based beverages and powdered mixes, filed a complaint against CytoSport with the National

Advertising Division of the Council of Better Business Bureaus this past spring. CytoSport declined to participate, so in May, the NAD referred the dispute to the Federal Trade Commission and the Food and Drug Administration. In June, Nestlé also filed a petition with the United States Patent and Trademark Office to revoke Muscle Milk’s trademark for being “deceptively misdescriptive.”

In a statement, Nestlé said, “Consumers looking at Muscle Milk, marketed as a ‘Nutritional Shake,’ are likely to be misled into believing they are purchasing a flavored or supplemented milk product, when, in fact, they are purchasing a water-based product that contains no milk.”

In its own statement, CytoSport said it had never “marketed Muscle Milk products as flavored dairy milk. . . . CytoSport’s marketing and advertising materials have made it clear—over the more than 10 years that Muscle Milk has been sold—that Muscle Milk products are high-protein nutrition products designed after one of nature’s most balanced foods: human mother’s milk.”

The maker of Muscle Milk is usually on the other side of trademark battles, having opposed dozens of proposed marks since 2007, often because the product name contains the word “milk” and allegedly violates its trademark. In May, CytoSport sued Defense Nutrition, maker of Warrior Milk, a protein shake powder, for trademark infringement.

Muscle Milk was first sold as a powdered mix. Sales surged with the introduction in 2004 of a ready-to-drink product that sits in the dairy cases alongside flavored milk. The brand claims it is similar to human milk because it contains “fast burning fats” called medium chain diglycerides. Its ingredients include milk proteins like whey, but it is considered nondairy because the lactose and fat have been removed.

**Why it matters:** Although the FDA defines milk as the “lacteal secretion” from cows, the agency has been generous in allowing non-milk-based products to use the term. In 2000, the agency rejected a request by the National Milk Producers Federation that it prevent soy-based beverages from calling themselves “soy milk.” On the other hand, if the FTC decides to investigate Nestlé’s allegations, it will focus on whether the use of the term “milk” in “Muscle Milk” is false and misleading.

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## Google Accused of Displaying Ads on “Low Quality” Sites

Google is facing allegations from at least five search marketers that it displayed their ads on “low quality” pages, including sites that are primarily advertisements.

In a complaint filed last month in federal court for the Northern District of California, Bolaji Olabode charges Google's AdSense for Domains and AdSense for Errors programs with placing ads on sites with little or no editorial content. Users that mistype a URL may land on such sites. Olabode alleges that he advertised on Google, but does not specify what products or services he sold.

Last summer, four other search marketers—lawyer Hal Levitte, law firm Pulaski & Middleman, online retailer RK West, and container company JIT Packaging—sued Google for alleged low-quality clicks. The cases were consolidated and are proceeding in federal district court in San Jose.

Levitte, for example, claimed that 16.3% of the clicks driven by a recent AdWords campaign to promote his law firm were from parked domains—sites that are primarily ads—and 404 error pages. According to the lawsuit, none of these clicks resulted in business.

**Why it matters:** The lawsuits charge Google with failing to make it clear that ads would appear on low-quality pages, and providing no easily accessible means of opting-out of appearance on such pages. Whether the lawsuits will succeed may turn on what services Google promised—either explicitly or implicitly—to provide the users of its programs, as well as any disclaimers that it made.

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