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Honors and Awards

Law Firm of the Year, National Advertising, *U.S. News and World Report*, 2012 and 2014

Announcement

Join Venable's **Advertising and Marketing Practice Group** for "Connecting the Dots: An Advertising Law Symposium" on March 11 from 8:00 a.m. to 5:15 p.m. ET at Vanderbilt Suites in New York City.

This full-day, CLE program will tackle advertising law hot topics, including comparative claims, native advertising, social and digital media, and celebrity endorsements. Hear from seasoned litigators, advertising and marketing executives, and top representatives from key regulatory enforcement bodies, including the Federal Trade Commission and Food and Drug Administration.

Complimentary breakfast and lunch will be served with a cocktail reception to immediately follow the program.

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

Analysis

Avoid Brand Fumbles When Marketing During Championships

Starting with last Sunday's Super Bowl®, and running through the Winter Olympic Games® and March Madness®, the next six weeks present marketers with a cornucopia of sports-related marketing opportunities and potential pitfalls, write Venable attorneys **Melissa Landau Steinman**, **Kristen R. Brown**, and **Maura A. Marcheski** in a recent post to Venable's advertising law blog.

The authors write that advertisers and marketers must be extra cautious when launching ad campaigns that could imply any sort of connection or association with these events. Both the NFL and the NCAA vigorously prosecute unauthorized usage of their marks. The U.S. Olympic committee, they write, enforces U.S. laws that expressly protect the use of the word "Olympics" and the interlocking rings, and can be even more aggressive than the NFL and NCAA about stopping "ambush marketing" and unauthorized association with its marks.

While there are some safe and creative workarounds, such as the ubiquitous use of "the Big Game," the authors write, the most important things brands can do are to respect the established trademarks and avoid implying some type of affiliation with the big event.

[Click here](#) to read the full text of the blog post by Steinman, Brown, and Marcheski on Venable's advertising law blog, www.allaboutadvertisinglaw.com

It Always Pays to Disclose Connections

When marketers work with affiliate networks, affiliates, publishers, or other types of third parties to get their products in front of potential customers online, paying attention to the terms and conditions those third parties use with content providers pays dividends, writes Venable partner **Gregory J. Sater** in the February edition of *the DRMA Voice*.

To illustrate his point, Sater analyzes a recent deal Microsoft made with popular video gaming site Machinima. The deal promised to pay content creators for positive homemade video reviews of the Xbox One gaming console posted on the Machinima YouTube channel. Among other things, the terms and conditions required content creators to keep all matters relating to the agreement confidential. Some



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content creators apparently misunderstood the Ts and Cs to mean they should not disclose the existence of their financial relationship.

Sater writes that although, according to media reports, Microsoft was not aware of the terms and conditions the publisher applied to the content creators, the company bore the brunt of the public backlash when the Ts and Cs became public.

[Click here](#) to read the full text of Sater's article.

[Click here](#) to read an *Ad Age* story about the Microsoft/Machinima deal.

Caution is the Name of the Game When a Claim is a Brand Name

The Federal Trade Commission (FTC) and the National Advertising Division of the Council of Better Business Bureaus (NAD) require adequate substantiation for claims wherever they appear. There is typically a higher bar for requiring a company to change its trade name because it includes an allegedly unsupported claim. But, write Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) in a recent post to Venable's advertising law blog, there is no "But it's the name of my product" defense to a false advertising challenge.

The authors point to a recent NAD challenge to illustrate the point. The maker of Purex laundry detergent recently challenged concentration claims for several of Arm & Hammer's laundry detergents, including its "Arm & Hammer Ultra 4X" brand. Arm & Hammer's claims relied on a dosing standard the rest of the laundry detergent industry no longer used. NAD found, as it has before, that comparative claims must be in reference to a current standard that is consumer relevant. It recommended the discontinuation of concentration claims using the old dosing standard. In the case of the Ultra 4X brand, NAD found that there would not be an exception for the 4X reference simply because it was part of the brand name.

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

[Click here](#) to read the NAD press release announcing the decision.

Brands Can Fight Back Against Fake Review Sites

While infomercials and other television ads disclose that they are paid advertisements for a certain product, things can be much murkier online, writes Venable partner [Gregory J. Sater](#) in the January issue of *Electronic Retailer* magazine. When consumers conduct online searches for a product, they often encounter a series of sponsored or organic results for "product review" sites. Often, Sater writes, these "review" sites have a dirty little secret: they are paid ads for the product to which they give the higher rating.

He writes that brands can try SEO strategies to push the fake review sites off the first page of search results. They can also send a complaint to the FTC, or sue in court. Companies can also complain to the Electronic Retailing Self-Regulation Program (ERSP), which allows marketers to challenge any competitor's ad on the basis that it is likely to cause deception.

In his article, Sater analyzes an ERSP challenge of the type of fake review site that plagues many brands. Although ERSP does not have the power to award monetary relief or an injunction, he writes it does have the power to ask challenged advertisers to discontinue or make changes to a disputed ad. The self-regulatory body can also refer matters to the FTC, where ERSP referrals frequently have the influence necessary to go to the top of the Commission's enforcement list.

[Click here](#) to read the full text of Sater's article in the January edition of *Electronic Retailer*.

[Click here](#) to read the ERSP press release announcing the decision in the deceptive review site matter.

Upcoming Events

[ERA The Great Ideas Summit – Miami, FL](#)
February 10-12, 2014

Join Venable, a proud sponsor of the "Thirsty Tuesday" reception, on Tuesday, February 11 from 6:00 p.m. to 7:30 p.m. ET at ERA's The Great Ideas Summit – the premier conference for electronic retailing executives as well as C-level marketers and suppliers. Meet the attorneys of [Venable's Advertising and Marketing Practice Group](#) on the show floor at booth number three.

[Click here](#) to register and receive a \$100 discount as a Venable guest when you use promotion code **EX85692**.

[Digital Entertainment World – Los Angeles, CA](#)

February 18-20, 2014

With content at its core, Digital Entertainment World is a leading business-to-business event and marketplace for global media and technology executives. Venable partner [Po Yi](#) will moderate a panel titled "The Role of Brands in Creating Effective, Impactful & Monetizable Digital Content" on February 19 at 11:15 a.m. PT. Venable Partner [Justin E. Pierce](#) will moderate "Balancing Act: Embracing Innovation and IP Protection" on February 19 at 2:45 p.m. PT.

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

[ACI's Legal, Regulatory and Compliance Forum on Cosmetics – New York, NY](#)

February 19-21, 2014

Join Venable partner [Claudia A. Lewis](#) on February 19 at 2:00 p.m. ET for a "Working Group on Cosmetics 101" at the American Conference Institute's Legal, Regulatory and Compliance Forum on Cosmetics. This hands-on workshop will provide an overview of the law and regulations governing cosmetics. Key topics that will be addressed include the role and authority of the FDA in the cosmetics market, structure/function claims, label requirements, cosmetic promotion and advertising, adverse event reporting, and recalls.

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

[International Association of Privacy Professionals Global Summit 2014 - Washington, DC](#)

March 5-7, 2014

Venable is a proud sponsor of IAPP, the annual conference where more than 1,000 privacy, data protection, and security professionals from around the globe convene. Join Venable partner [Stuart P. Ingis](#) for a legislative update on March 6 at 12:15 p.m. ET. Also, meet [Venable's Privacy and Data Security Practice Group](#) on the show floor at booth #35.

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

[Engredea and Natural Products Expo West - Anaheim, CA](#)

March 6-9, 2014

These two conferences bring together the community of leading suppliers and manufacturers to source new ingredients, packaging, technologies, equipment, and services in the global nutrition industry. Join Venable partners [Todd A. Harrison](#) and [Claudia A. Lewis](#) on Friday, March 7 at 1:30 p.m. PT as they present "Give Me a Break, is that Really a Disease?" Visit Venable's [Food and Drug Practice Group](#) on the Engredea show floor at booth #262.

To schedule a meeting with an attorney in the [Food and Drug Practice Group](#), [click here](#).

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

[Merchant Acquirer's Committee Conference 2014 – Las Vegas, NV](#)

March 11-13, 2014

Venable is a platinum sponsor of the premier payments industry risk conference hosted by the Merchant Acquirer's Committee (MAC). Don't miss the conference's opening keynote presented by Venable partner and former U.S. Congressman [Bart Stupak](#) on March 11 at 8:40 a.m. PT. He will address self-regulation, the best practices of self-regulation, and how an industry can suffer if the government intervenes.

[Click here](#) to learn more and 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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