



November 7, 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

Marcella Ballard
mballard@Venable.com
212.370.6289

Amy Ralph Mudge
amudge@Venable.com
202.344.4743

Gregory J. Sater
gjsater@Venable.com
310.229.0377

Randal M. Shaheen
rmshaheen@Venable.com
202.344.4488

Victoria R. Danta
vrdanta@Venable.com
212.370.6248

Honors and Awards

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

Analysis**FDA: Hold the Trans Fat**

Today the Food and Drug Administration (FDA) issued a notice, to be published in tomorrow's *Federal Register*, tentatively determining that partially hydrogenated oils (PHOs) are not generally recognized as safe (GRAS) for use in food. If this determination is finalized, PHOs would effectively be banned from use in foods such as donuts, cookies, frozen pizzas, baked goods, and many other foods, unless they are first approved by the FDA as "food additives." In a client alert released today, Venable attorney **John G. Moore** discusses the implications of the notice.

[Click here](#) to read Venable's client alert on the notice.

[Click here](#) to read the FDA's pre-publication version of the notice.

The Perils of the Common Claim

Marketers love comparative percentage claims and exclusivity claims, write Venable partners **Jeffrey D. Knowles** and **Gregory J. Sater** in the November issue of *Electronic Retailer* magazine. However, unsubstantiated superiority claims are a recipe for trouble. In the article, the pair examine a recent National Advertising Division (NAD) decision to illustrate the hazards of ads that cherry pick data, fail to use appropriate disclaimers, and claim that features are "exclusive" when they are actually available in competing products.

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

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

NAD Setting High Bar for Native Ad Disclosures

The NAD recently published a second decision in as many months examining the use of so-called "native advertising." The take away, write Venable partners **Amy Ralph Mudge** and **Randal M. Shaheen** in a recent post to Venable's advertising law blog, is that the self-regulatory body is clearly setting a high bar for disclosures in cases where marketers and publications blur the line between editorial and advertising content.

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

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

It Pays to Disclose What's Being Disclosed

A recent California Court of Appeals decision should get the attention of marketers making disclosures online, writes Venable partner **Gregory J. Sater** in the November issue of the *DRMA Voice*. In the class action, which had previously been dismissed by the trial judge, the Court of Appeals found that the case should go to a jury because although the hyperlink to the disclosure, labeled "fair use policy," was clear and conspicuous, the average consumer might not realize that it disclosed the limitations of an "unlimited" calling plan. The decision, Sater says, reminds marketers that the placement of online disclosures and the labeling of hyperlinks leading consumers to those disclosures are very important considerations.

[Click here](#) to read the full text of Sater's column in the November edition of the *DRMA Voice*.



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Federal Court Holds B2B Internet Platform Liable for Counterfeit Sales

In October, Richemont International Ltd., which owns a number of luxury brands, scored an important victory against online counterfeiting, write Venable attorneys [Marcella Ballard](#) and [Victoria Danta](#) in the [October issue of Venable's IP Buzz newsletter](#). The U.S. District Court for the Central District of California granted summary judgment and issued a permanent injunction against TradeKey (PVT) Ltd. and Sawabeh Information Services Co, whose business-to-business platforms actively "promoted and facilitated" the sale of counterfeit goods. Ballard and Danta note that the ruling contrasts to the U.S. Supreme Court's *Tiffany & Co. v. eBay* (2010) ruling, which largely insulated B2B platforms from liability for contributory counterfeiting. However, this decision could prove a valuable tool for brands fighting online platforms with a more than arms-length role in the sale and distribution of counterfeits.

[Click here](#) to read the full text of the piece by Ballard and Danta.

Upcoming Events

[SupplySide West – Las Vegas, NV](#)

November 12–16, 2013

SupplySide West brings together key professionals, thought leaders, and executives who drive the dietary supplement, food, beverage, animal nutrition, personal care, and cosmetic marketplace to explore and discover innovations from around the world. Join Venable partners [Todd A. Harrison](#) and [Claudia A. Lewis](#) for a thought-provoking town hall discussion titled "What Regulators and Other Attorneys Will Not Tell You About FDA, FTC and Class Action Lawsuits." Learn the contours of a permissible structure/function claim, and the type of evidence you need to substantiate claims. In addition to providing strategic steps you can take to minimize your regulatory risk and plaintiff class action exposure, this insightful presentation will explore how to respond to a FDA warning letter, a demand from the FTC and threatened legal action by plaintiff class action attorneys to bolster your class action toolkit.

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

["Expert Strategies for Engaging With and Responding to Government Notices, Enforcement and Requests for Information" for Momentum's FDA Intensive Program](#)

November 18, 2013

2:15 p.m. – 3:00 p.m. ET

Venable partner [Ralph S. Tyler](#) will join an insightful panel titled "Expert Strategies for Engaging With and Responding to Government Notices, Enforcement and Requests for Information" during Momentum's FDA Intensive program. In this age of social media and publicly available information provided by government alerts, it is of paramount importance that counsel take care when drafting appropriate responses to government inquiries to avoid additional liability. Learn practical do's and don'ts when responding to and interacting with the government. Warning letters, 483 inspection reports, and consent decrees are some of the hot button topics that will be discussed.

[Click here](#) for more information. For discount registration information, [click here](#).

[35th Annual Brand Activation Association Marketing Law Conference – Chicago](#)

November 18–20, 2013

Venable is proud to sponsor the BAA 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](#) will present a session on gift cards, coupons, and loyalty programs. Joining her as speakers at the conference are Venable partners [Po Yi](#), who will join a roundtable to discuss legal aspects of partnering with the media on integrated marketing programs, and [Amy Ralph Mudge](#), who will address how to respond when the FTC challenges advertising.

Please join Venable at these sessions and at our reception at the House of Blues on November 18 from 6:30 p.m. to 8:30 p.m. CT.

[Click here](#) to learn more about the BAA Conference and to receive \$100 off your registration as a Venable guest when you enter discount code **VENABLE100**.

[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

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575 7th Street, NW, Washington, DC 20004

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