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A Primer on Avoiding the Potential Pitfalls Associated with Social Networking

Amid intensifying scrutiny surrounding Facebook’s privacy practices, it is more important than ever for employers to carefully consider their social media policies to avoid potential “land mines” that exist in the cyber-communication world.

Manatt litigation partners [Esra Hudson](#) and [Rebecca Torrey](#) outlined a few of the most pressing social networking concerns in their article, “Avoiding Social Networking Land Mines for Employers,” which published in *InsideCounsel* earlier this month. To view the article, click [here](#).

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FTC Files Suit Against Dietary Supplements That Claimed to Prevent Diabetes

The Federal Trade Commission filed a complaint in California federal court against Wellness Support Network, Inc., and two of its principals, alleging that the defendants made false claims that their dietary supplements can treat and prevent diabetes.

The closely held California corporation has marketed and sold its Diabetic Pack and Insulin Resistance Pack since 2004, claiming that the products can lower blood sugar and cholesterol levels, cause less dependency on medications by reducing insulin resistance, and improve the body’s use of glucose. The packs each contain three different products made of vitamins, minerals and plant extracts, and were sold for \$76.70 for a 30-day supply, the FTC said.

The defendants claimed the products were a “Completely Natural! Diabetes Breakthrough!” and that “Nobel Prize-winning technology validates” the ingredients of the product packs.

Advertising primarily online, the defendants' claims that scientific studies prove the product is an effective treatment for diabetes and that the product is clinically proven to cause an average drop in blood glucose levels of 31.9% are false and unsubstantiated, the FTC complaint alleged.

The agency is seeking a permanent injunction to bar the company from making deceptive claims, as well as refunds to consumers and disgorgement of profits. The defendants have faced regulatory scrutiny in the past – in December 2006, the Food and Drug Administration sent the company a warning letter. In the letter, the FDA stated that the company was violating the law by making therapeutic claims that the Diabetic Pack could cure or improve a user's diabetes.

To read the FTC's complaint, click [here](#).

Why it matters: The makers of dietary supplements have been the focus of increasing regulatory action from the FTC and FDA, as well as recent legislation. In May, Senators Tom Harkin (D-IA) and Orrin Hatch (R-UT) introduced the Dietary Supplement Full Implementation and Enforcement Act of 2010, intended to ensure enforcement of and update the 1994 Dietary Supplement Health and Education Act of 1994. The bill would not create new restrictions or rules, but it would allocate more funds to the FDA for greater enforcement. The bill would also require the agency to make annual reports to Congress and publish guidance on dietary ingredients not included in the earlier law.

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Failure to Post EnergyGuide Info Results in FTC Action and Fine

The Federal Trade Commission settled with online appliance retailers P.C. Richard & Son, Abt Electronics, and Pinnacle Marketing Group over charges that the companies failed to post EnergyGuide information on their Web sites to inform consumers about the energy use of the major home appliances they sold. The defendants – which also operate brick-and-mortar stores – agreed to pay more than \$400,000 in total penalties.

The cases were the first the agency has brought against online retailers for Appliance Labeling Rule violations. Under the Appliance Labeling Rule, appliance retailers are required to provide EnergyGuide information for certain products, including refrigerators, freezers, dishwashers, air conditioners, water heaters and washing machines. The yellow-and-black label informs consumers about the key features of the appliance, the estimated annual cost to operate the appliance, the estimated annual electricity use, and the cost range of other appliance models with similar features.

In a statement, David Vladeck, the Director of the FTC's Bureau of Consumer Protection, emphasized that the Labeling Rule applies not just to physical stores, but to online retailers. "Companies selling appliances covered by the FTC's rule, either online or in stores, have an obligation to provide EnergyGuide labels," he noted.

For knowingly violating the law, P.C. Richard & Son agreed to pay \$180,000; Abt Electronics, Inc., will pay \$137,500; and Pinnacle Marketing Group will pay \$100,000. The FTC also notified two other online retailers – Universal Computers and Electronics and Universal Appliances, Kitchens, and Baths – that it intends to seek an additional \$640,000

from them for similar charges. The companies have not yet agreed to settle.

To read the complaints and consent decrees in the cases, click [here](#).

Why it matters: The FTC’s enforcement action exemplifies the agency’s recent focus on environmental claims and marketing issues, especially in light of the proposed revisions to the Green Guides. In addition, the FTC recently announced that it will extend the Appliance Labeling Rule to televisions manufactured after May 10, 2011, requiring retailers and manufacturers to use the EnergyGuide label to inform consumers about different models and how much energy they use.

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Court Grants Class Certification in Enfamil Advertising Class Action Suit

A U.S. District Court judge certified a class of Florida consumers in a suit alleging that Mead Johnson & Co. falsely advertised its Enfamil infant formula.

The company faced a prior suit and challenges before the National Advertising Division based on ads stating the product was “The only brand clinically proven to improve visual and mental development.” The Florida class action plaintiffs claim that Mead’s ads – particularly one that used a blurry image of a yellow duckling – suggested that not using Enfamil could lead to poor eyesight, among other problems. The suit also alleges that Mead claimed Enfamil was the only formula brand to contain two fatty acids, DHA and ARA, to aid development, when in fact Enfamil is identical to store-brand formulas.

U.S. District Court Judge James I. Cohn certified a class of Florida consumers alleging violations of state law and false advertising. The class of plaintiffs has common issues of fact or law about whether Mead’s representations were true and what damages would be appropriate, he said. Even though the plaintiff failed to name the specific product she purchased in the list of products included in the suit, the court said the mistake did not preclude class certification, or the plaintiff’s role as the class representative.

Mead also argued that the plaintiff was an inappropriate class representative because she continued to buy Enfamil even after she learned that it was not the only product to contain DHA and ARA. But the court found that because the plaintiff asserted that “she bought Enfamil Lipil based on a belief that the product contained something that other infant formulas did not, the court finds that [her] claim has ‘the same *essential* characteristics as the claims of the class at large.’”

To read the complaint in *Nelson v. Mead Johnson*, click [here](#).

To read the order granting class certification in *Nelson v. Mead Johnson*, click [here](#).

Why it matters: Mead Johnson has faced a slew of lawsuits and regulatory action over the Enfamil ad campaign. In December 2009, a federal jury ordered the company to pay \$13.5 million to a competitor, PBM Products, for the comparative claims made in the campaign about store-brand baby formula. The company also lost three consecutive challenges brought by Abbott Laboratories, maker of Similac, before the National Advertising Division, which were cited in the Florida class action and ultimately led the NAD to refer the case to the Federal Trade Commission.

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