

# manatt

November 4, 2008

## ADVERTISING LAW

NEWSLETTER OF THE ADVERTISING, MARKETING & MEDIA PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

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### Reminder – We'll See You In Chicago on November 20th at the 30th Annual PMA Law Conference

Most of our clients and friends are aware that the PMA Law Conference is only a few weeks away. Linda Goldstein, chair of Manatt's Advertising, Marketing & Media Division, Kerrie Campbell, chair of the firm's Consumer Product Safety Group, and the entire Manatt team look forward to seeing you there.

Linda will lend her highly sought-after legal and marketing acumen to the program once again. Always informative and engaging, this year Linda will reveal everything you need to know to create successful and lawful sweepstakes, games, and contests and present solutions to the complex challenges in text messaging, fee-based skill contests, user-generated content, new hybrid models, and more.

The recently-enacted Consumer Product Safety Improvement Act means coming to grips with many new regulatory requirements and enforcement initiatives. Kerrie will help guide you through the complexities.

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### UPCOMING EVENTS

**November 20-21, 2008**  
**PMA's 30th Annual Promotion Marketing Law Conference**

**Topic:**

"Navigating the Potholes: The Evolving Landscape for Sweepstakes, Games & Contests"

**Speaker:** [Linda Goldstein](#)

**Topic:**

"Consumer Product Safety: Hear from the Regulators How the New Laws Affect Your Promotion"

**Speaker:** [Kerrie L. Campbell](#)

Marriott Downtown

registration fee by using promotion code SPR150.

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## Identity Theft Red Flag Rules Delayed Six Months

In an October 22 announcement, the Federal Trade Commission stated that it was pushing back by six months the enforcement of new regulations that will require a wide array of companies to put identity theft prevention measures in place.

Financial institutions and creditors now have until May 1, 2009, to develop programs to identify patterns, practices, and activities that serve as "red flags" for possible identity theft.

The FTC, the Office of the Comptroller of the Currency, the Federal Reserve, the Federal Deposit Insurance Program, the Office of Thrift Supervision, and the National Credit Union Administration (NCUA) jointly drafted the rules, which were finalized in October 2007 under the Fair and Accurate Credit Transactions Act (FACT Act). They became effective January 1, but financial institutions originally had until November 1 to comply. The FTC said that its decision to delay its own enforcement plans did not affect other federal agencies' enforcement of the original deadline.

The FTC said it decided to push the deadline back after discovering that some industries and companies under its jurisdiction were uncertain about whether they fell under the FACT Act's definition of creditor or financial institution. Many entities that are typically not required to comply with FTC rules in other contexts were not even aware of the rulemaking, and learned of the rule's requirements too late to comply by November 1, the agency said.

The FTC is planning to give the industry more detailed guidance, including which entities are covered by the rule and what their duties are, although it does not know when the additional guidance will be completed.

Most financial institutions are regulated by federal banking agencies and the NCUA, while the FTC has oversight of creditors, including finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications firms.

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Magnificent Mile  
Chicago, IL  
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**December 4-5, 2008**

**Film & Television Law**

**Topic:**

"Product and Music Placement, Branded Entertainment: Issues and Litigation"

**Speaker:** [Linda Goldstein](#)

**Topic:**

"The Value of Fame: Understanding the Right of Publicity"

**Speaker:** [Mark S. Lee](#)

Century Plaza Hotel  
Los Angeles, CA  
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## Harvard Professor Sues Google Over Typosquatting

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Benjamin Edelman, a professor at Harvard Business School, has filed a class action lawsuit against Google over agreements the search engine has to place ads on so-called typosquatting Web sites.

A typosquatting Web site has a domain name address that is almost the same as that of another Web site or brand, with the aim of taking advantage of users' typos. When the user ends up on a typosquatting site by accident, he or she sees ads related to the intended Web site. If the user clicks on an ad link—which frequently includes the site the user was initially trying to get to—the typosquatter gets revenue from the advertiser. If a user clicks on a Google-supplied ad on a typosquatting site, the advertiser pays Google, which keeps part of the money and distributes the rest to the typosquatter.

Typosquatters typically seek out sites aimed at kids, sites of companies with names that are easily misspelled, and highly trafficked sites.

In his lawsuit, Edelman, whose work focuses on Internet marketplaces and advertising fraud, alleges that Google is unfairly profiting from the misuse of other companies' trademarks. He places what he says are conservative estimates of Google's gross revenue from typosquatting sites at \$32 to \$50 million dollars a year.

The class action lawsuit represents any U.S. trademark holder whose Web sites have been the target of typosquatters. The lawsuit names Google and several big typosquatters as defendants.

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## Coors Faces \$12.5 Million Lawsuit Over iPint

Molson Coors Brewing Co. is the target of a lawsuit alleging that its popular iPhone application, the iPint, infringes on another application called iBeer.

The lawsuit was filed on October 10 by Hottrix, a small Las Vegas company that owns the rights to the iBeer application. It seeks \$12.5 million in damages. According to the complaint, London ad agency Beattie McGuinness Bungay contacted Hottrix to license its \$2.99 iBeer application, which uses the

accelerometer inside the iPhone to simulate drinking a beer. After Hottrix declined the offer, Beattie McGuinness hired Illusion Labs in Sweden to create a close copy of the application, the complaint alleges. The iPint, which was developed to promote Coors' beer brand Carling, was released free of charge, causing iBeer sales to suffer, the complaint states. The suit alleges that there have been more than 6 million downloads of the free iPint.

iPint and iBeer both appear to fill users' iPhones with beer, which they can then "drink" by tipping the phone. iPint was developed as part of a mini-game created for Carling, called Barslide. In it, players who successfully help a sliding pint avoid obstacles on the bar are rewarded with a virtual beverage. Users can access the beer-tipping feature without playing the game and the lawsuit alleges that the game is included only to "create a false distinction" between iPint and iBeer.

Coors has withdrawn iPint from the U.S. and Australian versions of Apple's App Stores, but the lawsuit says the program is still available in other parts of the world.

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## **Plaza Hotel Gets Go-Ahead to Build in Las Vegas**

Eloise may soon have another Plaza Hotel to wreak havoc in— in Las Vegas. The owners of New York City's famous Plaza Hotel have gotten the green light to use the Plaza name for a planned \$5 billion resort-casino on the Las Vegas Strip, in spite of a similarly named hotel nearby.

When the El-Ad Group, an Israeli company that owns the Plaza Hotel, first revealed its plans to expand to Las Vegas last year, the Tamares Group, owner of the low-budget 37-year-old Plaza Hotel and Casino there, sued to enjoin use of the name.

In an October 6 decision, a jury found that Liechtenstein-based Tamares had not adequately safeguarded its trademark to the Plaza name in Las Vegas. The hotel had gone by several names over the years, including the Union Plaza and Jackie Gaughan's Plaza Downtown.

El-Ad bought 36 acres on the Las Vegas Strip last year for a record \$33 million an acre, with plans to erect a 6,700-unit hotel-casino version of the Plaza Hotel in New York. The

company announced this year that it would push back construction until at least 2010 because of financing issues. Currently, it plans to open in 2012.

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## **Russia Blocks Google Buyout of Ad Agency**

On October 23, Google said that Russia's competition regulator has rejected its offer to buy a Russian online advertising agency.

In July, Google proposed to buy out Begun, a subsidiary of the Moscow-based search-engine operator Rambler Media that sells search and contextual text-based ad services. However, the regulator, the Federal Anti-Monopoly Service, ruled that the acquisition would violate Russian antitrust laws.

The move would have boosted Google's percentage of online advertising in Russia, the last European market where it lags behind a local provider. In Russia, Google trails Yandex, the country's most popular search engine, according to Liveinternet. Rambler is ranked third.

Google had agreed to pay \$140 million for Begun, which counts 40,000 advertisers and a partner network of more than 143,000 Russian-language sites. At the same time, Rambler agreed to use Google's contextual and search advertising technology on its site in exchange for displaying Google ads next to search results.

Russia offers a virtually untapped online market, with just about 11 percent of users logging on every day, 9 percent using the Internet several times a week and 10 percent using it from several times a month to at least once a year, according to a report by the All-Russian Center for the Study of Public Opinion.

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## **FTC and States Target Credit Repair Firms**

The Federal Trade Commission announced that it and 24 state consumer protection agencies have targeted 33 companies in a nationwide crackdown on credit repair operations.

In response to consumer complaints, the FTC and the states launched "Operation Clean Sweep" in 22 states. As part of the effort, the Commission has filed complaints against seven

operations for violations of the FTC Act and the Credit Repair Organizations Act (CROA) for making false and misleading statements, such as claiming they can substantially improve consumers' credit reports by removing accurate, negative information from credit reports. The agency also alleges that the defendants violated the CROA by charging an advance fee for credit repair services. In the seven actions, the Commission seeks to enjoin the defendants' allegedly unlawful business practices, bar further violations, and order them to pay consumer redress and give up their ill-gotten gains.

The 26 state actions allege violations of state laws and the CROA.

Examples of the FTC complaints include:

- Nationwide Credit Services, Inc. and James R. Dooley, based in Florida, advertise their credit repair services on [www.ehappyhour.com](http://www.ehappyhour.com) and in the Yellow Pages, stating, for example, that bankruptcies, judgments, slow pay history, repossessions, and collection accounts "CAN BE LEGALLY ERASED!" The defendants allegedly charge from \$300 to \$1,000, including an advance fee ranging from \$75 to \$150, and a monthly fee that they often debit from consumers' bank accounts. After paying the fees, consumers find that the defendants allegedly rarely, if ever, deliver the promised results. In many instances, they take consumers' money without providing any services. Consumers often find their cancellation requests ignored, and their refund requests are almost always denied.
- Clean Credit Report Services, Inc., Ricardo A. Miranda, Daniel R. Miranda, and Ruthy Villabona, based in Florida, advertise on radio, television, and [www.ccrstoday.com](http://www.ccrstoday.com). It uses testimonials, such as one allegedly from an Atlanta woman who says, "When I lost my job and simply didn't pay my credit cards and when I needed to get my car loan they said I needed at least a 600 credit score but I had a 480. I got into the CCRS club and did what they told me to do . . . When I pulled my report online I realized that I had a 621. I couldn't believe this really works."

Consumers who answered the defendants' ads on syndicated radio talk shows were told that the defendants would help remove all the negative remarks that appeared on their credit, and that even current debt could be removed. After agreeing to pay \$400 in advance for services, consumers would find that the defendants allegedly would frequently simply debit the money from their bank accounts, and then do little, if anything, to provide service. When consumers called to complain, they were given various excuses, and those who

persisted are sometimes hung up on, put on hold, or ignored.

State law enforcement efforts involved the attorney general offices in Arkansas, California, Colorado, Florida, Illinois, Louisiana, Maine, Mississippi, Missouri, New Jersey, New Mexico, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, and West Virginia; the justice departments of North Carolina, Oregon, and Wisconsin; Idaho's Department of Finance; Louisiana's Office of Financial Institutions; Vermont's Department of Banking, Insurance, Securities and Health Care Administration; and Wisconsin's Department of Financial Institutions.

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## Manatt Litigation Victory News

Manatt Wins Verdict for Client ICO Global Communications, Ltd.

Boeing Faced with \$700+ in Compensatory and Punitive Damages

Manatt has prevailed in Los Angeles Superior Court on behalf of its client ICO Global Communications against The Boeing Company and Boeing Satellite Systems International. The Jury Found for ICO on its claims for breach of contract, tortious interference, and fraud and has awarded ICO compensatory damages of \$462 million and punitive damages of \$236 million with interest. Full story [here](#).

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