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Tony DiResta to Offer Expertise at Upcoming SOCAP International Annual Conference

In light of an anticipated increase in FTC scrutiny surrounding social media marketing practices, Manatt partner [Tony DiResta](#) will co-present with Coca-Cola Marketing Counsel James Dudukovich in a special breakout session titled, "The FTC's Efforts to Regulate Social Media Marketing and Privacy: The Impact on Customer Care Professionals," at the Society of Consumer Affairs Professionals International Conference.

The event, which is being held from October 17-20, 2010 in San Francisco, CA, will target consumer engagement strategies through social media, marketing and sustainability. Tony's October 18th presentation will address new developments in social marketing and privacy, as well as highlight trends that will impact companies' dealings with their customers. He will also invite leading companies to discuss their social media policies.

For more information about this event, click [here](#).

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"C" is for Cookie Lawsuits

Half a dozen lawsuits have been filed over the last few weeks against companies that use online cookies to track consumers' browsing habits. The suits allege that the use of cookies violates the Computer Fraud and Abuse Act, and they were filed against companies like Cable News Network, Travel Channel, and WhitePages.com.

In the most recent suit, three California residents claimed that

Ringleader Digital, a mobile ad technology company, violated their privacy with its use of a media stamp. The suit names companies that worked with Ringleader, such as CNN and WhitePages.com. The companies intentionally exploited the operating software on the plaintiffs' mobile devices, according to the complaint, and tracked their mobile activity for ad purposes without permission.

Ringleader's "software contains local storage databases that allow Web sites to store information on these devices, which when used appropriately enhance internet browsing on mobile devices," according to the complaint. "Ringleader Digital found a way to exploit these databases for their own advantage." In a statement, Ringleader's CEO Bob Walczak said that the company "intends to defend its practices vigorously."

Although similar suits were dismissed in 2001 and 2003, the new suits argue that both technology and the law have changed and that the holdings should not be applied to new, more sophisticated tracking technology.

To read the complaint in *Aughenbaugh v. Ringleader Digital*, click [here](#).

Why it matters: Online tracking is a hot topic not only in class action lawsuits, but for lawmakers in Washington. Both of the privacy bills introduced in the House of Representatives this year – the Boucher-Stearns bill and the proposal by Rep. Bobby Rush (D-Ill.) – would limit the practice. And the Federal Trade Commission has floated the idea of a "Do Not Track" registry similar to the federal do-not-call list, which would allow consumers to opt out of behavioral targeting.

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Sara Lee Limits Marketing to Kids

Sara Lee joined the Children's Food and Beverage Initiative launched by the Council of Better Business Bureaus and agreed to nutritional guidelines for foods marketed in media targeting children under the age of 12. The company said that it would market to children only food defined as "healthful" by the American Heart Association and will restrict the use of licensed characters in its ads.

The guidelines also prohibit the use of product placements in child-directed editorial or program content, the advertising of food or beverages in elementary schools, and the limiting of the use of food and beverages shown in interactive games primarily directed to children under 12.

Sara Lee is the seventeenth company to join the initiative, which launched in 2006, joining companies like Burger King, Campbell Soup, ConAgra, Dannon, General Mills, Kellogg, Kraft, McDonald's, Nestle USA, PepsiCo, Post Foods, and Unilever U.S. Four other companies joined the

initiative and pledged to stop all advertising to children under the age of 12: Coca-Cola, Hershey, Mars, and Cadbury Adams.

Each joining company prepares a pledge describing the specifics of its commitment, which must be approved by the initiative's staff.

To learn more about the initiative or read the pledges made by the companies involved, click [here](#).

Why it matters: Companies that market to children face increasing scrutiny, in part because of the Presidential Task Force focusing on childhood obesity and First Lady Michelle Obama's "Let's Move!" campaign. And the Federal Trade Commission recently issued subpoenas to 48 food and beverage companies about their marketing to children and adolescents as the agency prepares a follow-up to its 2008 report, "Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities and Self-Regulation."

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Mouthwash or Maple Syrup, Be Careful of Implied Claims

The Food and Drug Administration sent letters to Johnson & Johnson, CVS Corp., and Walgreen Co., warning the companies to stop making claims that their mouth rinse products effectively remove plaque above the gum line or promote healthy gums. "These claims suggest the products are effective in preventing gum disease when no such benefit has been demonstrated," the letters said.

The letters, sent September 27, cautioned the manufacturers that their products are used to prevent or mitigate disease by resisting cavities and removing plaque.

Johnson & Johnson's Listerine Total Care Anticavity Mouthwash, for example, claims on its label that it "Strengthens Teeth, Restores Minerals to Enamel, Fights Unsightly Plaque Above the Gum Line, Helps Prevents Cavities, Kills Bad Breath Germs, and Freshens Breath." Those claims, combined with the "Total Care" name, "suggests that the product is comprehensive in function, and will provide benefits, including antigingivitis and antiplaque benefits. We are not aware of any support for the antiplaque/antigingivitis claims or other statements suggesting that the product is comprehensive in function, providing benefits beyond those related to prevention of cavities. Thus, the product's labeling claim that it will provide all of the benefits listed, is misleading and accordingly makes it misbranded," the letter said.

In another case of implied claims, the makers of Log Cabin Syrup decided to "tweak" the ingredients of the syrup after a federal legislator and a state trade group complained. Pinnacle Foods Group LLC had

updated the syrup's label, calling it "all natural" and changing the product packaging to a beige plastic jug.

In response, the New Hampshire Maple Producers Association called the new labeling "deceptive." Vermont legislator Peter Welch (D-Vt.) also chimed in. "By continuing to market its product with jug-like packaging and 'all-natural' labeling, Pinnacle leaves consumers with the impression that Log Cabin table syrup and Vermont maple syrup are one and the same," he said. "As Vermonters know, they're not even close. It's time for Pinnacle to stop misleading customers and stop imitating the Vermont maple industry."

Rep. Welch also sent a letter to the Food and Drug Administration, asking the agency to investigate whether the Log Cabin syrup violated federal law by marketing itself as a natural product when it contains ingredients like caramel coloring. In light of the controversy, Pinnacle agreed to tweak its recipe. "Although this product does not pose any health or food safety issues, we are changing our recipe to remove caramel color immediately. With regard to the other ingredients, xanthan gum and citric acid are natural plant-derived ingredients," the company said in a statement.

To read the FDA's warning letter to Johnson & Johnson, click [here](#).

Why it matters: In the absence of an express claim, implied claims based on words or product packaging could be objectionable. Advertisers should be especially careful of using the term "natural," which has recently been the subject of several lawsuits filed against food and beverage makers. While the FDA has not defined the term, it must be used in a truthful, nonmisleading manner.

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