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Manatt Attorneys Take Center Stage at Leading Industry Events

Consumer Product Safety



On February 24–27, [Kerrie Campbell](#), Chair of Manatt's Consumer Product Safety Group, will moderate a panel discussion on consumer product safety issues at the annual International Consumer Product Health and Safety Organization Conference in Orlando, Florida. Panelists will include Julie Vallese, Managing Director, Burson Marsteller; Don Mays, Senior Director, Product Safety-Consumers Union; Rick Wolderberg, Chairman, Learning Resources; and Joseph Martyak, Acting Director of Public Affairs and Chief of Staff to Nancy Nord, CPSC. For more information, visit <http://www.icphso.org/conference/2009annual/conf09.html>.

Web 2.0



On March 5–6, at PLI's New York Conference Center, [Linda Goldstein](#), Chair of Manatt's Advertising, Marketing, and Media Division, will serve on the faculty of "Information Technology Law Institute 2009: Web 2.0 and the Future of Mobile Computing: Privacy, Blogs, Data

UPCOMING EVENTS

February 10-11, 2009

Promotion Marketing Association: Basics Seminar

Topic:

"Basics of Promotion and Integrated Marketing"

Speaker: [Michael Barkow](#)

USA Weekend Magazine

535 Madison Avenue

New York, NY

[for more information](#)

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March 5-6, 2009

PLI's Information Technology Law

Breaches, Advertising, and Portable Information Systems." Program details are available at http://www.pli.edu/public/about/conference_centers.asp.

Diet Supplements, Food, and Cosmetic Products



On March 5-8 in Anaheim, California, Manatt partner [Ivan Wasserman](#) will put government regulators to the test at SupplyExpo, a leading health and nutrition industry event. In an interactive game show format, Ivan, together with Gary Coody, R.Ph., FDA's National Health Fraud Coordinator in the Office of Enforcement, Office of Regulatory Affairs, and Michelle Rusk, a senior attorney with the Federal Trade Commission's Division of Advertising Practices, will help attendees learn right from wrong when it comes to making compliant product claims. To learn more, visit <http://supplyexpo.com/supplyexpo09/public/enter.aspx>.

TV, Video, and User-Generated Content; Video Games and Computer Entertainment; and Union & Guild Issues



On March 16-18, Manatt partners [Kenneth Kaufman](#) and [Alan Brunswick](#) will focus on user-generated content and union and guild issues, respectively, at PLI's 2009 Counseling Clients in the Entertainment Industry seminar in New York City. See http://www.pli.edu/product/seminar_detail.asp?id=48930 for registration information.

Rise Seen in Online Data Theft and Financial Scams

As the economy suffers and the markets decline, the Internet is experiencing an increase in the number of scams and data theft schemes, security experts say.

Promotions for fake computer virus protection, get-rich-quick scams, humorous or pornographic videos harboring malicious software, and other scams ballooned when the economy tanked last fall. In September 2008 alone, the number of fraudulent and criminal schemes tripled to more than 31,000 a day, according to Panda Security, an Internet security firm.

Criminals have become more and more adept at developing botnets—enormous networks of zombie computers infected with malicious software—and using them to build up large caches of stolen data. Last fall, programs called Trojans flooded the Internet through e-mail and instant message

Institute 2009

Topic:

"Mobile Advertising and Web 2.0"

Speaker: [Linda Goldstein](#)

PLI New York Center
New York, NY
[for more information](#)

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March 11-13, 2009

The IAPP Privacy Summit 2009

Topic:

"Sunday in the Park With FACTA:
Navigating the Post-FACTA FCRA
Regulatory Landscape"

Speaker: [Helen Foster](#)

Washington Marriott Wardman Park
Washington, DC
[for more information](#)

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March 16-18, 2009

PLI Practising Law Institute

Topic:

"Television, Video & User-Generated
Content"

Co-Chair & Moderator: [Kenneth M. Kaufman](#)

New York, NY
[for more information](#)

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April 2-3, 2009

**PLI's Information Technology Law
Institute 2009: Web 2.0 and the Future
of Mobile Computing: Privacy, Blogs,
Data Breaches, Advertising, and
Portable Information Systems**

spam, Web sites, and online ads. Users who clicked on the wrong item would inadvertently download an invisible Trojan designed to steal personal data and turn computers into zombies. Con games—ranging from e-mail phishing scams, which attempt to get users to type in personal data on fake Web sites, to cyberhijacking, in which crooks use stolen user names and passwords to pilfer online accounts—increased as well.

Attacks on data storehouses also appear to be on the rise. Last month, Heartland Payment Systems disclosed that its system, used to process 100 million payment card transactions a month, was compromised in the fall. Last week, the job site Monster.com announced it would impose a mandatory password change for all North American and Western European users, after hackers broke into its databases to steal user IDs, passwords, and other data.

Criminals are also using the direct messaging systems used on the social-networking Web sites Facebook, MySpace, and Twitter to spread viruses. In another growing trend, tainted links are increasingly infecting routine search queries. Data thieves also appear to be recruiting laid-off or disgruntled employees with inside knowledge of their employers' IT systems, security experts warn.

Calorie Data Influences How New Yorkers Eat

A new city law requiring chain restaurants to provide calorie content on their menus is affecting how New York City consumers eat, according to findings released last week by food industry consultant Technomic. However, restaurant chains overall do not appear to be losing business as a result. Instead, they are selling more lower-calorie items.

The nine-month-old law requires chains with 15 or more locations in the city to post calorie content. Earlier this month, Technomic surveyed 750 restaurant patrons from New York City's five boroughs to assess the law's early impact. About 86% of respondents said they found the amount of calories surprising. More than four out of five, or 82%, indicated that they were opting for lower-calorie menu items as a result.

Although Technomic did not track where New Yorkers were eating, two out of three respondents said calorie disclosure was having an impact on where they ate. One-third of respondents said they stopped patronizing certain restaurants as a result of the new law.

Topic:

"Mobile Advertising and Web 2.0"

Speaker: [Linda Goldstein](#)

PLI California Center
San Francisco, CA
[for more information](#)

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OUR PRACTICE

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However, the results of the study reflected what consumers said they were doing, rather than what they were actually doing. It did not ask for chain-specific information.

Under Leibowitz, FTC May Increase Scrutiny of Online Ads

It is widely anticipated that President Obama will name Jon Leibowitz chairman of the Federal Trade Commission sometime later this month. Observers say the shift in command could mean a brighter spotlight on online advertising and privacy, which have been two priorities for Leibowitz in his current role as an FTC commissioner.

Leibowitz would replace William Kovacic as FTC head. Kovacic took over from Deborah Platt Majoras in March 2008, when she left the agency to become general counsel of Procter & Gamble.

Observers expect a Leibowitz-run agency to continue its current posture of pushing for industry self-regulation. But Leibowitz, a Democrat, has not ruled out FTC regulation of activities such as behavioral targeting.

Leibowitz was a lobbyist for the Motion Picture Association of America before being appointed to the FTC in 2004. Although online privacy has been a priority for Leibowitz as commissioner, observers expect he would shift his focus to a broader range of subjects if he is named chairman. While commissioners can choose their pet issues, chairs are traditionally more focused on gaining consensus on a wide array of issues.

Five commissioners nominated by the President head up the FTC. The commissioners serve staggered seven-year terms. A maximum of three commissioners can belong to the same political party at any one time. Kovacic and Commissioner J. Thomas Rosch are Republicans, and Commissioner Pamela Jones Harbour, whose term will expire in September, is an Independent. Majoras' slot is currently empty. Obama is likely to fill those two slots with Democrats or Independents.

Drug Firms Face Pressure Over DTC Ads

With a new administration headed by a president who has

pledged to lower pharmaceutical costs and a stronger Democratic majority in Congress, drug companies will surely face increased pressure to put limits on the use of direct-to-consumer (DTC) advertising.

However, there are a few bright spots for pharmaceutical marketers. The DTC issue has not come up as an early priority, and may not until well after President Obama announces his nominee for Food and Drug Administration Commissioner. Moreover, some of the biggest Congressional critics of DTC advertising are not pushing for a total ban. Representative Henry Waxman (D-Calif.), the newly appointed chairman of the House Energy and Commerce Committee, which oversees the FDA, supports a two-year DTC ad ban for new drugs. But Representative Waxman also thinks the FDA should have the discretion to make exceptions to the moratorium for new drugs that do not appear to pose a safety concern. Such a ban would not necessarily spell doom for the DTC ad industry either. Last year, about 15% of the \$4.7 billion spent on DTC ads were for drugs less than a year old.

Another concern of the drug companies is the possibility of some kind of restriction or financial requirement tied to supply agreements with Medicare. President Obama has indicated that he would like Medicare to negotiate drug prices directly with drug companies, instead of through managed-care providers. This raises the specter that Medicare could try to impose limits or obligations on pharmaceutical suppliers, such as lower prices for drugs produced by companies with DTC advertising.

The FDA has announced plans to study the impact of DTC advertising. It says it will produce a fake ad for a blood pressure medication and show it to 2,400 participants to develop a better understanding of how ads affect a consumer's understanding of a drug's benefits and risks. The data, says an FDA spokesperson, should help determine "whether additional research is needed to develop the standards called for in the FDA Amendments Act of 2007." The law reconfigured the manner in which the FDA enforces DTC advertising by authorizing the agency to punish drug companies who produce false or misleading ads.

Elsewhere in Washington, Representative Waxman says he does not expect to turn his attention to DTC ads anytime soon: "We've got the stimulus bill with a number of important provisions, and I'd like to get onto the big issue, which is universal health care in this country. And while we've got to be paying a lot of attention to the FDA in a number of respects, I think the food-safety issue is a lot more important

than this one at the moment. So [DTC ads are] just not the highest item on my agenda.”

Sponsors Divided Over Michael Phelps' Bong Shot

Michael Phelps, the swimmer who won a record eight gold medals at the Beijing Olympics, has lost one endorsement but kept others after a U.K. newspaper published a three-month-old photograph of him smoking a bong earlier this month.

After the photo appeared, cereal maker Kellogg Company announced that it would decline to try to renegotiate a sponsorship agreement with Phelps that expires at the end of this month. A company spokesperson said the photo sends the wrong message, stating “Michael’s most recent behavior is not consistent with the image of Kellogg.” Phelps may not have proven to be one of Kellogg’s best endorsers in any event. In an embarrassing discovery, while recently interviewing Phelps for “60 Minutes,” reporter Anderson Cooper found a box of General Mills’ Honey Nut Cheerios in Phelps’ kitchen cabinet.

Subway, which signed Phelps to an advertising campaign for the sandwich chain, said that although it was “disappointed in his behavior,” it would continue with its relationship with the Olympian.