

# manatt

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### FCC Postpones Product Placement Decision

Federal Communications Commission Chairman Kevin Martin said he still expects the agency to look at the issue of product integration on TV despite his last-minute decision to remove it from a meeting agenda last month.

Although the FCC didn't vote on the notice of proposed rulemaking—the first official step toward creating new FCC regulations—FCC insiders said it had the three votes necessary to win approval. The aides said they expect the FCC to take it up early this year.

Martin's comments no doubt disappointed the ad industry which hoped it had convinced the FCC to reconsider issuing the notice. The three main U.S. advertising trade groups—the American Association of Advertising Agencies, the American Advertising Federation, and the Association of National Advertisers—sent a letter to the FCC urging it to instead issue a less stringent notice of inquiry, which is designed to gather information as a means of generating ideas.

The trade groups contend that there are already sufficient rules in place to provide notice and disclaimers as to which products are paid for in on-air content, including promotional considerations listed in the end credits. They argue that the crawls at the bottom of the screen being demanded by consumer groups like Commercial Alert that would appear at the moment products are featured in a show are unnecessary.

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## UPCOMING EVENTS

**October 21, 2008**

**ACI: Sports Sponsorship Advertising and IP**

**Topic:**

"When Retired Players Sue From Coscarart v. Major League Baseball to Parrish v. NFLPA"

**Ronald S. Katz**

"Morality and an Agreement Mortality--Taking Appropriate Measures to Avoid the Termination of an Endorsement Deal"

**Linda Goldstein**

The Carlton Hotel  
New York, NY

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**October 22, 2008**

**D.C. Bar CLE Seminar**

**Topic:**

"Copyright Law and Litigation"

**Kenneth M. Kaufman**

D.C. Bar Conference Center  
Washington, D.C.

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**November 20-21, 2008**

**PMA's 30th Annual Promotion Marketing Law Conference**

**Topic:**

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

## U.K. Regulators Get Tough on Broadband Claims

U.K. regulator Ofcom has warned broadband firms that they could face formal action if they fail to give consumers accurate information about the speed consumers will receive when they sign up.

The warning came in a letter sent by Ofcom head Ed Richards to the Ofcom Consumer Panel in response to its work with broadband suppliers on the advertising of high-speed services. The regulator said new guidelines on selling broadband should come into force early this year.

Last September, a study by UK magazine *Computeractive* found that 62% of those who used its speed testing software got less than half the advertised top speed. The next month, the Ofcom panel talked to the UK's top six Internet service providers about the findings. Critics say that advertising broadband services using the phrase "up to" can give consumers a false sense of the speed they will receive. The Ofcom panel said speeds advertised as "up to" a certain level end up being much slower in reality.

The panel urged Ofcom to draft and administer a mandatory code of practice for net firms. Panel Chairman Colette Bowe said: "This code would establish agreed processes to give the customer the best information during and after the sales process, and to give them flexibility to move freely to different packages that reflect the actual speeds with which their ISPs are able to provide them."

The code would let customers know when they sign up about the maximum theoretical speed they can get on their line; provide information about what affects line speed; and mandate a call to customers two weeks after installation to let them know what speed they are getting. At that time, if speeds were "significantly" slower than what the customer signed up for, the customer should be able to swap to a different package free of charge or back out of the deal.

The panel also said it would ask the Advertising Standards Authority to ensure that ads more prominently feature information about what can slow data passage.

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## Philips Sues P&G Over Sonic Razor Claims

Philips Electronics sued Procter & Gamble Company on December 17 over the latter's claims that the Braun Pulsonic electric razor works better, thanks to "innovative sonic pulses."

Contests"

### [Linda Goldstein](#)

#### Topic:

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

### [Kerrie L. Campbell](#)

Marriott Downtown Magnificent Mile  
Chicago, IL

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### **December 4-5, 2008** **Film & Television Law**

#### Topic:

"Product and Music Placement: Branded Entertainment: Issue and Litigation"

### [Linda Goldstein](#)

#### Topic:

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

### [Mark S. Lee](#)

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## OUR PRACTICE

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The complaint in Manhattan federal court seeks a court order enjoining the ads. It also requests unspecified damages, noting that half of electric razors are sold during the fourth quarter, though the suit came only in time to affect the last week before Christmas.

P&G acquired Braun in 2005, when it merged with Braun's parent company, Gillette. Philips said the campaign launched in September to promote the Braun Pulsonic includes ads that compare it to Philips' Norelco SmartTouch by showing the ripples each razor produces when submerged in water. But the complaint said there's no evidence those ripples are reproduced on men's faces or make any difference in shaving.

The complaint said Braun's claim that "nine out of 10 men" voted Pulsonic the "best electric shaver they have ever tried" came from a survey by *Men's Health* magazine that actually was a scientifically uncontrolled sweepstakes in which Braun gave each participant a free \$250 shaver.

Despite claims of "revolutionary technology," priced at the high end of electric razors, Pulsonic is no different acoustically than Braun's previous high end shaver, the 360 Complete, Philips said. The complaint compared Pulsonic's sonic claims to claims that sibling Gillette's M3 Power vibrating razor shaves closer. The U.S. District Court in Connecticut found no basis for those claims in a 2004 injunction against the ads.

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**Parent Keeps Svedka Edgy, But Pulls Offending Ads**

Over the past few years, sales of Svedka vodka had grown by leaps and bounds thanks in large part to provocative advertising that ignored accepted industry standards and requests by the industry's marketing arm to pull ads deemed offensive.

So when Constellation Brands paid \$384 million for the brand last February, many in the industry watched the deal with interest. How would Svedka take to being owned by a member of the Distilled Spirits Council of the U.S. and subject to its marketing code?

The industry's first marketing code report since the deal shows that the brand continues to breach industry guidelines, but, unlike before, is now pulling its offending ads when cited. Svedka was the most-cited advertiser in DISCUS' Semi-Annual Code Report, which covered January through June of 2007.

One offending print ad—starring Svedka's curvaceous femme-bot mascot—featured the tagline: "Gay men still prefer Svedka over sex with women." The review board found the tagline in violation of its "good taste" provision, and Svedka pulled the ad.

A second offending ad, on the celebrity gossip website Perez Hilton, asked consumers: "Did your private sex tape just go public? Blame Svedka." After fielding a complaint, the review board was unable to determine whether the ad violated its code. It forwarded the complaint to a group of outside advisers who thought the association of the product with sex violated the "good taste" provision.

Both complaints came from other DISCUS members, not from the general public.

Just being cited for poor taste is actually a step up for Svedka. In ads from 2004 to 2006, it was found to have used lewd images and relied on sexual success as a selling point.

Most of the other complaints listed in the report involved ad placement, including several online ads. Last month, DISCUS released new guidelines for Internet ads. The new rules don't change the existing standard—ads are supposed to be placed where the audience consists of at least 70% legal drinkers—but they do spell out more specific means by which advertisers are expected to ensure the standard is met.

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