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News**Venable Obtains Complete Dismissal of all Tort and Fraud-Based Claims Aimed at New York Law School**

On Wednesday, Venable attorneys won dismissal of all claims brought by a putative class of New York Law School students and alumni in *Gomez-Jimenez v. New York Law School*, which was filed in New York State Court.

The fundamental claim in the case was one of false advertising, arguing that students and applicants relied on misleading information disseminated by the school concerning its graduates' employment and salaries in making their decision to attend the school.

In his opinion, Judge Schweitzer wrote, "The issues posed by this case exemplify the adage that not every ailment afflicting society may be redressed by a lawsuit." His decision dismissed each of the Plaintiffs' claims of statutory consumer fraud, common law fraud and negligent misrepresentation and adopted many of the arguments Venable set forth in its briefs and at the recent oral argument. Most significantly for purposes of the consumer fraud claim, the Court emphasized that the school's statements were not misleading in a material way to reasonable consumers acting reasonably under the totality of the circumstances, and the applicants had a wealth of information regarding their realistic employment prospects before, during and after the onset of the recession.

The Venable team handling the case includes **James L. Shea**, **Michael J. Volpe**, **Edmund M. O'Toole**, **Edwin M. Larkin**, **Michael C. Hartmere**, **Megan Mann**, **Julia L. Davis**, **Emily M. Tortora** and **Kaveri B. Arora**.

[Click here](#) to read Venable's press release about the dismissal.

[Click here](#) to read Judge Schweitzer's opinion.

"Fake News Site" Affiliate Marketers Settle FTC Deceptive Advertising Charges for \$1.3 Million

The Federal Trade Commission ("FTC") announced Wednesday that two online marketers have agreed to settle allegations that they used so-called "fake news" websites to promote sales of dietary supplements containing acai berry. In both cases, the FTC alleged that the marketers created websites designed to look like those of legitimate news organizations and enticed consumers to buy the featured products from online merchants. Allegedly, the websites, which had names such as "Health News Health Alerts," often falsely represented that the reports they carried had been seen on major media outlets such as ABC, Fox News, CBS, CNN, *USA Today* and *Consumer Reports*.

The settlement in the first case, which the FTC describes in its press release as "the first FTC suit against an affiliate network," is with Copeac, a New York-based company that allegedly both operated its own fake news sites and recruited a network of affiliates that used fake news sites to drive product sales. Under the settlement, Copeac will pay more than \$1.3 million to the FTC. The company must also monitor all of its affiliate marketers when selling any good or service, obtain adequate information about its affiliate marketers, approve its affiliates' advertisements, and immediately stop processing payments generated by any affiliate using deceptive advertisements.

In the second case, the FTC is suspending a \$2.7 million judgment against Coulomb Media, Inc., and Cody Law after the defendants pay \$170,000 in cash and surrender other assets.

In both settlements, the FTC requires that the companies make clear that any future commercial

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Honors and Awards

2011 *Chambers USA* Award for Excellence Winner



Top-Tier Firm *Legal 500*



Law Firm of the Year, National Advertising, *U.S. News and World Report*, 2011



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messages are advertisements rather than legitimate journalism. The settlements also bar the defendants from making deceptive claims about health-related and any other types of products

[Click here](#) to read the FTC's press release and proposed settlements.

Oregon Attorney General Announces \$3.34 Million Deceptive Advertising Settlement with Pfizer, Enforces Previous Internet Marketing Settlement

On Tuesday, Oregon Attorney General John Kroger announced that the state had reached a \$3.34 million agreement with Pfizer, the world's largest research-based pharmaceutical company, to settle allegations that the company used unreliable and unsubstantiated claims to deceptively market its Zyvox® antibiotic.

The state alleged that Pfizer relied on flawed clinical studies to substantiate assertions that Zyvox® was superior to a well-known generic drug for treatment of pneumonia and bacterial skin infections. Under the settlement, the company will pay more than \$3.34 million to reimburse the State Accident Insurance Fund and Oregon Department of Corrections for purchases they made of Zyvox®. The settlement funds will also fund a new Consumer Education and Antimicrobial Stewardship Program. The remainder of the settlement money will be used to fund Oregon's consumer protection activities. The settlement provides for injunctive relief to deter future similar claims by Pfizer and that will prevent similar future misconduct with respect to other Pfizer drugs.

The state also announced an unrelated settlement with Pfizer regarding the company's Internet marketing practices. Under the terms of a 2008 settlement with the state, the company's promotional claims were required to comply with the federal Food, Drug and Cosmetic Act ("FDCA"). However, Pfizer received notice of violation letters from the Food and Drug Administration ("FDA") in both 2009 and 2011 alleging that the company violated the FDCA by promoting various drugs via "sponsored links" without disclosing required risk information. Under the second Oregon settlement announced on Wednesday, Pfizer is required to comply with FDA's interpretation of the law.

[Click here](#) to read the Oregon Attorney General's press release.

Analysis

The FTC Speaks Spanish - Do Your Advertising Lawyers?

Late last month the FTC and the Florida Attorney General's Office obtained a consent order against defendants who used Spanish-language television and radio spots to advertise a deceptive prize travel promotion. Venable partner [Gary D. Hailey](#) writes on Venable's advertising law blog, www.allaboutadvertisinglaw.com, that marketers should not be surprised that the FTC and state attorneys general are taking a greater interest in Spanish-language advertising given the growth in the Hispanic population over the past two decades and the growing influence of Spanish-language media.

[Click here](#) to read Hailey's blog post.

Federal Crackdown on Debt Buyer Emphasizes Need for Consumer Disclosures

A recent FTC settlement with debt buyer Asset Acceptance Capital Corp. is the latest of several actions against companies that profit from consumers in financial distress. Venable attorneys [Jonathan L. Pompan](#) and [Damon W.D. Wright](#) write on Venable's advertising law blog, www.allaboutadvertisinglaw.com, that the settlement illustrates the type of disclosures that any company which collects or buys debt and their attorneys should expect the FTC to demand in connection with investigations and enforcement actions going forward. They also write that it would be wise to expect the new federal Consumer Financial Protection Bureau ("CFPB") to follow this course through industry-specific regulations for debt collectors and debt buyers that are on the horizon.

[Click here](#) to read the post by Pompan and Wright.

Events

DMA 2012 - Washington D.C.
March 26-27, 2012

Venable will host the Direct Marketing Association's Issue Briefing on Monday, March 26. **Stuart P. Ingis** will join a panel on the Shifting Sands of Online Privacy.

ANA Advertising Law & Public Policy Conference - Washington, D.C.

March 28-29, 2012

Venable is a proud sponsor of the ANA Advertising Law & Public Policy Conference. Join Venable's **Randal M. Shaheen** in a discussion of two major class action lawsuits filed against brand notables Reebok and Dannon, **Stuart P. Ingis** as he participates in a panel discussion on the ever changing landscape of internet privacy law, and **Amy Ralph Mudge** during a Q&A session answering questions about every legal risk that keeps marketers up at night.

American Bar Association's Antitrust Law 2012 Spring Meeting - Washington D.C.

March 26-30, 2012

Venable's **Amy Ralph Mudge** will chair and moderate a panel on "The Supreme Court Redirects Class Action Defense" and **Claudia A. Lewis** will join a panel on the "Fundamentals of Consumer Protection."

MAC 2012 Conference - Las Vegas

April 3-5, 2012

Venable is a proud sponsor of the MAC 2012 Conference. Join the chair of Venable's advertising practice, **Jeffrey D. Knowles** in a point-counter point conversation with Lois Greisman of the Federal Trade Commission.

Toxics Regulation for Retailers and Consumer Products Manufacturers - Los Angeles

April 24, 2012

Please join Venable partner **Randal M. Shaheen** when he presents "**Setting up an Effective Sustainability Marketing Program and Avoiding Greenwashing Claims.**" Shaheen will provide an update on recent regulations, case law, regulatory initiatives, compliance and marketing issues to assist attorneys, corporate management, risk managers, insurance professionals and governmental representatives. The presentation starts at 1:15 (PST) and will take place at the Radisson Hotel at Los Angeles Airport.

FDLI 55th Annual Conference - Washington, D.C.

April 24-5, 2012

Venable partner **Ralph S. Tyler** will participate on a Roundtable of Former FDA Chief Counsels and **Ilene R. Heller** will join a panel on "Functional Foods: How Foods, Dietary Supplements and Pharmaceuticals Are Becoming Increasingly Intertwined."

ACI Litigating & Resolving Advertising Disputes - New York

June 19-20, 2012

Venable is a proud sponsor of the ACI Litigation & Resolving Advertising Disputes Conference. Please join Venable's **Thomas E. Gilbertsen** and **Amy Ralph Mudge**. Gilbertsen will speak on the explosion of class action lawsuits and Mudge will moderate a panel of judges providing the judicial perspective on advertising litigation.

Click here to subscribe to Venable's Advertising and Marketing RSS feed and receive the Venable team's insight and analysis as soon as it is posted.

Visit Venable's advertising law blog at www.allaboutadvertisinglaw.com.

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