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Make Your Voice Heard!

Learn directly from Venable attorneys and have them answer your questions on two of the hottest topics facing marketers today. Venable partners **Jeffrey D. Knowles** and **Gregory J. Sater** both have session concepts in contention for inclusion in the agenda of the Electronic Retailing Association's **2012 D2C Conference**. The agenda for D2C, the largest direct response industry conference in the nation, is determined via crowdsourcing, meaning that ERA wants you to choose which panels you are most interested in, from a series of potential panels. Thus, your vote is critical.

Click here to learn more about the proposed sessions and **vote** for both Sater's "Riding the Social Media Rollercoaster" panel (#12 on the ballot) and Knowles' "Driving Change in Electronic Retailing: Enforcement, Self-Regulation and Legislation" panel (#15 on the ballot).

Analysis

FTC Workshop Examines Online/Mobile Disclosures

Last week, the Federal Trade Commission (FTC) convened a day-long public workshop to discuss updating its "Dot Com Disclosures" guidance on presenting online advertising disclosures, write the members of Venable's **Privacy and Data Security** practice in a recent post on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

The FTC is considering whether it should overhaul this guidance, which dates to 2000, to address current trends such as social media and mobile advertising. The workshop also included a panel devoted to mobile privacy disclosures. Newly confirmed Commissioner Maureen Ohlhausen kicked off the event by explaining that the FTC does not intend to expand its Section 5 authority, which empowers the FTC to investigate deceptive trade practices, but wants to shed light on how existing legal principles should apply to new technologies. Mary Engle, the head of the FTC's Advertising Practices Division, told participants that new technology platforms should adapt to existing legal principles, not the other way around. But discussion at the workshop highlighted the challenges of reaching this goal in a way that is technically feasible and does not detract from users' experience.

Click here to read the full blog post on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

Oreck Coughs Up \$700K Over Virus, Bacteria, Mold, and Allergen Claims

Venable partner **Gregory J. Sater** writes in a recent edition of the *DRMA Voice* that the FTC recently announced it was mailing more than 27,000 checks totaling almost \$700,000 in restitution to customers who purchased Oreck's Halo vacuum cleaner or ProShield Plus portable air cleaner during a window of time when, according to the FTC, Oreck's advertisements for those products were false or deceptive.

According to the FTC, Oreck's advertising and marketing materials misrepresented, either "expressly or by implication," that these products would prevent or substantially reduce the risk of catching the flu, that they would prevent or substantially reduce other illnesses caused by viruses, bacteria, molds, and allergens. The advertisements also claimed that the products would eliminate all or virtually all common germs and allergens.

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The FTC also alleged that Oreck conveyed the claim that some of the foregoing benefits were proven by scientific lab testing. According to the agency, however, Oreck's testing was not "competent and reliable scientific evidence."

Unfortunately, writes Sater, when the FTC settles with an advertiser, the agency usually doesn't tell the world what kind of testing the advertiser did have; nor does the agency tell the world exactly why, in the eyes of the agency, the advertiser's testing wasn't good enough. That, he says, makes it difficult for marketers and their attorneys to understand what, exactly, Oreck did or did not do.

[Click here](#) to read Sater's *DRMA Voice* column.

NAD Tells Ocean Spray That Taste Test Messages Are No Laughing Matter

The National Advertising Division of the Council of Better Business Bureaus (NAD) doesn't have much of a sense of humor when it comes to taste tests, write Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) in a recent post on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

The post discusses a recent NAD decision concerning an Ocean Spray television commercial featuring two cranberry growers who announce they are "doing a taste test" for "Ocean Spray cranberry juice versus vegetable juice."

After tasting the cranberry juice, one grower smiles and says "tasty." As he is bringing the bottle of vegetable juice to his lips, the other grower states, "Now the vegetable juice...with more than 10 times the sodium of cranberry juice." The grower holding the vegetable juice bottle then decides not to drink it, pours it out into the bog, and proclaims "We have a winner," as he raises the bottle of cranberry juice.

Mudge and Shaheen write that, although NAD characterized the commercial as "perhaps, tongue-in-cheek," it determined that the language "We're conducting a taste test" coupled with the visual of the second grower tasting Ocean Spray's product and then declaring it "tasty" and the "winner" conveyed a superior taste test message requiring substantiation. Their post details the reasons that NAD determined Ocean Spray's taste test evidence was "insufficiently reliable" to justify the implied superior taste message, and provides other insights into why NAD took exception to the juice marketer's advertisement.

[Click here](#) to read the full post on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

Upcoming Events

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.

For registration information, please [click here](#).

ACI Hatch-Waxman Boot Camp - San Diego

June 25-26, 2012

Attend this essential event to understand the interplay of intellectual property and FDA regulation relative to pharma/biotech patents in light of Hatch-Waxman and recently released biosimilars guidance. Additionally, ensure that you are aware of the intersection of the America Invents Act with Hatch-Waxman. Please join Venable partner [David G. Adams](#) when he presents "An In-Depth Look at 180-Day Exclusivity" on June 26, 2012 from 11:15 a.m. - 12:15 p.m. PDT.

For registration information, please [click here](#).

Engredea Asia Market Quickstart - Shanghai and Xi'an, China

June 29-30 and July 3-4, 2012

Developed by Engredea, the Market Quickstart is a teaching program that helps companies in the healthy and natural products industry prepare for international business, especially in the United States. Venable partner [Claudia A. Lewis-Eng](#) will address the attendees in Shanghai and Xi'an.

15th Annual NBJ Summit - Dana Point, CA

July 24-27, 2012

Venable is a proud sponsor of the 2012 NBJ Summit, hosted by *Nutrition Business Journal* and New Hope Natural Media. Please join Venable partner **Jeffrey D. Knowles** and Venable partner and former FDA Chief Counsel **Ralph S. Tyler** on Friday, July 27 at 9:15 - 10:35 a.m. PDT and at 11:00 - 11:40 a.m. PDT. Their session and panel discussion will provide insiders' views of regulatory activity by the FDA and FTC as well as predictions for the future.

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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