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Industry Launches New Food Labeling Plan

The Grocery Manufacturers Association and the Food Marketing Institute announced a voluntary industry program that will allow participating companies to place certain nutritional information on the front of food packaging.

The Nutrition Keys system primarily consists of four icons displaying information about calories, sugar, saturated fat and sodium. The system also allows manufacturers to display up to two "nutrients to encourage" on each package from a list of eight (calcium, fiber, iron, potassium, protein and vitamins A, C and D). These nutrients may be placed on the package only if the product has more than 10 percent of the daily value per serving of the

nutrient and meets the Food and Drug Administration's requirements for a "good source" nutrient content claim.

Recognizing that some packaging may not have enough space to accommodate all four icons, smaller food packages may use just one icon, representing calories in a serving of the food. Larger packaging will include all four basic icons, and up to two other "nutrients to encourage." "Today's sophisticated consumer wants more information about their food than ever before," said Leslie Sarasin, President and Chief Executive Officer of the Food Marketing Institute. "Nutrition Keys, combined with the many innovative nutrition education tools and programs in retail stores, is helping us meet that challenge and exceed consumer expectations."

The icons will begin appearing in 2011, and the food and beverage manufacturers and retailers participating in the program have invested \$50 million for a marketing campaign to build consumer awareness and promote the use of the icons, including in-store marketing, public relations and advertising.

To see examples of the Nutrition Keys system on food products, click [here](#).

Why it matters: Nutrition Keys is not the industry's first attempt at a self-regulating nutritional labeling program. In 2009 the industry launched Smart Choices, a nutritional labeling program that was intended to identify foods which met certain nutritional standards and highlight them for consumers using a green label on the front of packages. But the program came under fire after certain breakfast cereals with high sugar content were designated a healthy choice, resulting in investigations by the FDA and several state attorneys general. Currently the FDA is researching and working on its own labeling rules.

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Self-Regulatory Privacy Initiatives Advance; FTC Grants Extension on Comments

The Digital Advertising Alliance (“DAA”) has approved TRUSTe’s user privacy tool, known as “Trusted Ads,” to serve as one of the behavioral advertising icons that will indicate when ads are being presented based on data collected from consumers.

The DAA has already endorsed providers Evidon and DoubleVerify. Using the technology, companies can tag ads with the icon, which provides details about online ads and ad networks and the ability to opt out of some or all online tracking when clicked on by a consumer.

“We’re pretty confident that companies are going to be pleased with the overall consumer experience,” said Fran Maier, president of TRUSTe. “We expect that few consumers will actually opt out, but it will give the companies the opportunity to express the kind of transparency and choices available to consumers.”

In addition, other marketers and compliance companies recently announced that they will begin using the new icons. DoubleVerify said it is working with advertisers including Hyundai, Kia, and Qantas. Collective announced it has partnered with Evidon and that members of its network – like the AARP and EverydayHealth.com – will use ads with the icon.

In other behavioral advertising and privacy news, the Federal Trade Commission granted a request from the DAA to extend the deadline for comments on the agency’s privacy report. The agency issued a preliminary report, “Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policy Makers,” on December 1, 2010.

Originally scheduled to end January 31, the FTC said it would accept comments until February 18 “to encourage full participation by all stakeholders.” The DAA and other industry groups had asked for the extension, saying they needed more time to evaluate the FTC’s report. “Additional time will allow business to evaluate the potential impact on the

proposals to important business operations and critical services to consumers,” DAA counsel Stuart Ingis wrote in his request. To date, the FTC has received more than 200 comments on its report.

For a detailed analysis of the report, click [here](#).

To read the comments on the FTC’s privacy report received by the agency to date, click [here](#).

Why it matters: The FTC is expected to issue its final report later this year, and privacy remains a hot topic in Washington. The Senate Commerce, Science and Transportation Committee is set to hold hearings on online privacy in February. In the meantime, the industry’s push for self-regulation continues, with additional marketers and compliance companies joining the movement.

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Snapple “All Natural” Suit Dismissed for Lack of Injury

A U.S. District Court granted summary judgment to Snapple in a suit alleging that the company misled consumers by labeling beverages sweetened with high fructose corn syrup as “All Natural.”

The court ruled that the plaintiffs failed to present reliable evidence that they paid a premium for Snapple’s “All Natural” label, and therefore had not established that they suffered any injury. In September, U.S. District Court Judge Denise L. Cote denied class certification in the case, ruling that the named plaintiffs admitted that they had reasons other than the “All Natural” label for purchasing Snapple (such as taste) and that high fructose corn syrup was listed as an ingredient.

Dismissing the case, Judge Cote said the plaintiffs had provided “nothing but conjecture as to the prices they paid for Snapple and the prices of

comparable beverages available for sale at the time of their Snapple purchases.” Deposition testimony by the plaintiffs resulted in vague recollections of the locations, dates and prices of their purchases of Snapple, such as one plaintiff’s estimate that he paid “somewhere south of \$2” for a Snapple iced tea and “\$1.50, maybe” for a comparable Lipton beverage.

While acknowledging that beverage prices in the retail market vary widely and are affected by the nature and location of the outlet in which they are sold, the availability of discounts and other factors, the court said the plaintiffs had failed to identify with sufficient specificity the price of Snapple or comparable beverages.

To read the decision in *Weiner v. Snapple*, click [here](#).

Why it matters: Snapple has faced several suits over its “All Natural” label claims, with a number of cases currently stayed pending a ruling by the Food and Drug Administration as to whether high fructose corn syrup qualifies as a natural ingredient. The FDA has not defined “natural” and has a policy of qualifying individual ingredients as “natural” on a case-by-case basis. In 2009, Snapple began the process of substituting sugar for high fructose corn syrup in all of its products labeled “All Natural.”

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CPSC to Launch Online Database of Consumer Complaints

For the first time, the Consumer Product Safety Commission announced that it will post product complaints online, with a new, searchable database set to launch March 11.

The database is a result of the 2008 Consumer Product Safety Improvement Act. While the CPSC already collects reports of defective products, much of the information remained private under an exemption to the Freedom of

Information Act. Previously, in order to obtain these reports, consumers had to file a public records request with the CPSC, which then had to consult with the manufacturer before releasing the information.

Under the new system, the CPSC has five days to notify a manufacturer when a consumer files a complaint. The company then has 10 days to respond. It can challenge the complaint as false, argue that the publication will give away a trade secret, or submit a response, which will be published with the complaint in the database.

Complaints are scheduled to post to the system within 15 days of receipt by the CPSC. The agency oversees roughly 15,000 types of consumer goods, excluding tobacco, automobiles, tires, medical devices, food and drugs. While the new database has received praise from consumer advocates, companies have expressed concern that the complaints could contain inaccurate information or fake problems posted by competitors. "We're not opposed to a database," Rosario Palmieri, Vice President of the National Association of Manufacturers, told *The Washington Post*. "We're opposed to a database that's full of inaccurate information."

The database includes a disclaimer that the CPSC cannot guarantee the accuracy or completeness of the complaints, but it will carry the imprimatur of the federal government, Palmieri said. "When the CPSC as a government organization publishes this information . . . it gives it weight and credibility." Further, with the volume of complaints – 16,000 consumer complaints were made in 2009 – opponents argue that the CPSC will not be able to investigate most of them. CPSC officials argue that safeguards are in place to protect companies, including a requirement to provide verifiable contact information in the complaint (although that information will not be made public in the database or disclosed to the subject of the complaint).

To visit the CPSC's new database, click [here](#).

Why it matters: The CPSC is encouraging companies to provide online contact information to expedite the notification process when a complaint is filed and to regularly review and dispute any reports that appear to be based on false information. Given the short amount of time for companies to

respond, manufacturers should establish a policy and procedures for handling complaints.

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ASME Issues Guidelines for Online, Tablet Ads

The American Society of Magazine Editors has created new, voluntary guidelines for online ad formats, including product placements, paid links and “interruptive” ads.

Pursuant to the Best Practices for Digital Media, sponsored or paid links should be identified as such, marketing messages should not be integrated with editorial content, and Web sites should not promote products in exchange for advertising. According to the organization, the overriding principle of the guidelines is as follows: users should be able to tell whose content they are viewing.

Other provisions recommend that sponsored microsites be visually distinct from the main site and interruptive advertising be subject to editorial approval and contain a prominent “close” or “skip” button, lasting no more than 10 seconds. “Sponsored by” and “Brought to you by” are standard labels for editorial content supported by a single advertiser and should not be used for advertiser-provided content, according to the guidelines. Advertiser-provided content – like sponsored links and interactive tools or games – should be clearly labeled as advertising, with the source of the content and affiliation of the authors clearly acknowledged.

The guidelines advise that some ads do not need to be labeled as advertising, such as those placed above the navigation bar and on the right rail. However, advertisements placed elsewhere on the page – especially those that interrupt editorial space – should always be labeled as advertising.

The guidelines also emphasize compliance with the Federal Trade Commission's recently revised "[Guides Concerning the Use of Endorsements and Testimonials in Advertising](#)," noting that bloggers should disclose any commercial ties with a marketer or advertiser. The guidelines also address tablet ads, emphasizing the importance of ensuring that ads are made to look different from editorial pages. "Because many apps do not display adjacent pages, it is especially important that advertisements should not use typefaces, design elements and color schemes similar to those used on editorial pages," according to the guidelines.

Editors should avoid using navigational controls similar to those used in editorial pages to minimize confusion, and ads that take over the user interface should include a prominent "skip" or "close" control.

To read the guidelines, click [here](#).

Why it matters: The guidelines are voluntary, and violators typically receive a warning letter. However, to encourage compliance, ASME said persistent violators would not receive its National Magazine Awards.

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