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IMPORTANT CALENDAR UPDATE

WAIT! Word of Mouth Marketing Association is changing the date of WOMMA Wine Wednesday in Los Angeles.

NO! It is NOT going to be held on Wednesday, February 3rd.

YES! WOMMA will be posting a new date very soon.

WHEN? We will be sure to let you know, "Which Wednesday is WOMMA Wine?" or click [here](#) for more information.

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Try, Try Again: Maine Makes Its Second Attempt at Legislation on Advertising to Minors

After its law on advertising to minors met significant resistance last year, the Maine Legislature is now considering a narrower bill limited to just



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pharmaceutical advertisements.

LD 1677, "An Act to Protect Minors from Pharmaceutical Marketing Practices," was introduced to both houses of the state legislature the first week of January. Unlike the bill passed last year, the new bill applies only to pharmaceutical marketing.

Companies would be banned from collecting personal information about minors – defined as persons at least 13 and under 17 – on the Internet for the purposes of pharmaceutical marketing.

The proposed bill gives the state attorney general the power to define "pharmaceutical marketing" (although the law states it must include both prescription and over-the-counter drugs).

Violations of the law would constitute an unfair trade practice, with the attorney general also tasked with establishing procedures for receiving and investigating complaints of violations.

The first law, which went into effect on September 12, 2009, banned companies from selling or transferring health information about minors that identified them. That law, "An Act To Prevent Predatory Marketing Practices Against Minors," went beyond health-related information, also prohibiting companies from knowingly gathering personal information of those under 18 without parental consent.

After the law was enacted, a group of plaintiffs – the Maine Independent Colleges Association, the Maine Press Association, Reed Elsevier, and NetChoice – filed suit challenging its constitutionality. Maine Attorney General Janet Mills agreed not to enforce the law, and the plaintiffs agreed to dismiss the suit.

To read the proposed bill in its entirety, click [here](#).

Why it matters: The new bill is far more limited than the original law and is limited strictly to health-related information. However, companies should monitor the status of the legislation and be cognizant that the term "pharmaceutical marketing" remains undefined, as do the penalties.

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Yahoo! and American Airlines Settle Trademark Dispute

Yahoo! and American Airlines have settled their trademark infringement dispute over the use of the airline's name to trigger pay-per-click ads.

Lawyers in the country

UPCOMING EVENTS

February 9, 2010

FDA Virtual News Conference

Topic: "Serious Adverse Event Reporting for OTCs and Dietary Supplements: Confusion Reigns and Labeling Enforcement Looms"

Speaker: [Ivan Wasserman](#)
[for more information](#)

February 12, 2010

New York City Bar

Topic: "Understanding and Complying with Sweepstakes, Promotions and Marketing Law"

Speaker: [Terri Seligman](#)
New York, NY
[for more information](#)

February 23-25, 2010

Digital Signage Expo 2010

Topic: "Opt-in or Opt-out? Navigate the Consumer Privacy Issue for Future Profit"

Speaker: [Linda Goldstein](#)
Las Vegas, NV
Las Vegas Convention

American filed suit in October 2008, claiming that the search engine sold to third parties the right to use the airline's trademarks and service marks as keywords that would trigger paid ads.

The parties filed competing motions for summary judgment, but U.S. District Court Judge John McBryde had yet to rule before the settlement, the terms of which are undisclosed.

While several other lawsuits have been filed on this issue, no plaintiff has successfully argued that a search engine should be found liable for trademark infringement for the practice.

American Airlines filed a similar lawsuit against Google, which also settled.

Only one case has gone to trial, which resulted in a victory for the defendant. In that case, GEICO sued Google (Yahoo was also a defendant, but settled before trial began) and U.S. District Court Judge Leonie Brinkema ruled in favor of Google, finding that the sale of trademarks as keywords alone caused no confusion.

To read the complaint in *American Airlines v. Yahoo*, click [here](#).

Why it matters: Unfortunately, the case was settled before the court could decide the pivotal issue. Companies should be cautious to avoid using the trademarks of others without express written permission, as this practice could lead to costly disputes.

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Court Rules Weight-Loss Product Marketers Must Pay Almost \$2 Million

Ruling in favor of the Federal Trade Commission, a U.S. District Court in Connecticut has ordered the marketers of weight-loss products to pay almost \$2 million for making deceptive claims.

Bronson Partners, LLC (also known as New England Diet Center and Bronson Day Spa) sold the Bio-Slim Patch and Chinese Diet Tea, which the defendants claimed allowed users to lose weight without diet or exercise.

The defendants instructed users of the Chinese Diet Tea to drink one cup of tea after each meal to neutralize the absorption of fattening foods, which it claimed would result in losing as much as six pounds per week over multiple weeks and months while still enjoying their favorite foods. Users were promised similar weight-loss

Center

[for more information](#)

March 9-10, 2010

Social Media Marketing Summit

Speaker: [Anthony DiResta](#)
[for more information](#)

March 13, 2010

Supply Expo 2010

Topic: "Live from D.C.: It's Make Your Claims Right!"

Speaker: [Ivan Wasserman](#)
[for more information](#)

March 18-19, 2010

Minority Corporate Counsel Association 9th Annual CLE Expo 2010

Topic: "Green Litigation & Corporate Sustainability Programs: Beware the Trojan Horse"

Speaker: [Linda Goldstein](#)

Chicago, IL

Chicago Marriott Downtown

[for more information](#)

April 14-15, 2010

American Conference Institute

Advertising, eMarketing &

results – again, without diet or exercise – by wearing the Bio-Slim Patch on their body.

The FTC filed a complaint in 2004 after the defendant had marketed the products for more than two years.

The court granted the FTC’s motion for summary judgment in 2008 and found that the defendants’ claims were misleading and material.

In December, the court imposed restitution in the full amount that consumers paid for the products – \$1,942,325.

Despite the defendants’ arguments that consumers received some benefit from the products – because they contained green tea, which has nutritional value – the court disagreed.

“[T]he buyers were purchasing Diet Tea for the purpose of miracle weight loss. Even though the tea may have provided some intrinsic value itself, it was sold for weight loss purposes not for refreshment purposes and I will not deduct any value the consumer received,” the court said.

It further held that the defendants were not entitled to an offset for operating costs or for reorders from satisfied customers.

Finally, the court issued a permanent injunction against the defendants, finding that they “have engaged in, and are likely to engage in acts and practices that violate . . . the Federal Trade Commission Act.”

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

Why it matters: Despite the defendants’ numerous arguments, the court imposed the maximum amount sought by the FTC as restitution and permanently enjoined the defendants from future sales and advertising of weight-loss products. The case serves as a reminder to companies that a failure to substantiate claims that potentially could be found deceptive could end up costing millions in damages.

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FTC and FCC Seek Public Comments on Online Privacy

The Federal Trade Commission and the Federal Communications Commission are both seeking public comment on issues relating to online privacy.

Promotions for the Pharmaceutical Industry

Speaker: [Linda Goldstein](#)

Philadelphia, PA

The Union League

[for more information](#)

April 21-23, 2010

ABA Antitrust Law Spring Conference

Topic: "Mock Trial 2010: A
Jury Review of Exclusionary
Conduct"

Speaker: [Tom Morrison](#)

Washington, DC

[for more information](#)

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Our Practice

The FTC has requested public comment on proposed guidelines for the Children's Online Privacy Protection Rule submitted by iSAFE, a nonprofit organization.

The Rule applies to operators of Web sites directed at children under 13 years old that collect personal information about users as well as other Web sites that knowingly collect personal information from those under age 13. Under the Rule, the operators are required to notify parents and obtain consent prior to collecting, using, or disclosing any information.

The Rule contains a provision that allows nonprofit groups and companies to seek FTC approval of proposed guidelines as a form of self-regulation. If the FTC approves the guidelines, they operate as a safe harbor for the organization.

iSAFE is not the first organization to submit guidelines seeking approval since the Rule went into effect in 2000; four other groups, including the Children's Advertising Review Unit of the Council of Better Business Bureaus, have received approval from the FTC for their guidelines.

Specifically, the FTC requested comment on the impact of the provisions, their costs and benefits, and any alternatives iSAFE should consider. It also asked for comment on whether the proposed guidelines provide "the same or greater protections for children" as those in the Rule.

The public comment period will last until March 1.

Meanwhile, the FCC has also requested public input related to privacy protections.

In the process of developing a plan for national broadband, the FCC received a Notice of Inquiry from the Center for Democracy and Technology, a digital rights group. The letter contained significant questions about "the use of personal information and privacy in an online, broadband world."

The FCC has asked for public comment on the issues and questions raised in the inquiry, such as consumer expectations of privacy and the design of systems to control the flow of personal information.

In addition, the FCC seeks comment on the creation and use of transactional data, noting that broadband applications create sets of data about transactions – such as location information or health data – that can lead to the discovery of actions by individuals in public or in their homes.

For more details on the FTC request or to comment on the proposed guidelines, click [here](#).

Whether you're a multi-national corporation, an ad agency, a broadcast or cable company, an e-commerce business, or a retailer with Internet-driven promotional strategies, you want a law firm that understands ... [more](#)

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For more details on the FCC request or to submit a comment, click [here](#).

Why it matters: Privacy is a central issue for regulators, and companies should be prepared for updated direction from them in the coming year with respect to online privacy regulations.

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