



January 19, 2010



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## Manatt To Host WOMMA Wine Wednesday at Los Angeles Office

February 3

Word of Mouth Marketing Association's (WOMMA) 'Wine Wednesday'  
Los Angeles, CA

For its second Wine Wednesday of the new year, WOMMA brings its unique educational and networking event to the offices of Manatt in Los Angeles. This is a special wine tasting event you do not want to miss. Get to know WOMMA, its members and meet Manatt Partner and WOMMA General Counsel Tony DiResta.

For more information click [here](#).

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## Report Documents "Labeling Shenanigans" for FDA

The Center for Science in the Public Interest (CSPI) recently sent a report to the Food and Drug Administration documenting specific examples of what it called



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## “labeling shenanigans” in support of its argument seeking food labeling reform.

According to the report, CSPI has three overarching goals that it recommends to the FDA: improve the nutrition facts panel, improve ingredient labels, and stop false and misleading health-related claims. More specifically, the organization wants the FDA to prohibit qualified health claims for foods, which are not required to meet a “significant scientific agreement” standard like health claims and contain a disclaimer. In addition, it is seeking a ban on “structure/function” claims, where a food is marketed to “maintain” or “support” healthy vision or joints, for example.

The 158-page report, “Food Labeling Chaos – The Case for Reform,” contains specific examples of major food and beverage brands that it alleges engaged in “false claims” and “ingredient obfuscations.”

For example, the report criticizes Gerber Graduates Juice treats, a product for pre school-aged children. The packaging displays images of fruit, including oranges, grapes, peaches, cherries, pineapples, and raspberries. But the product itself contains no pineapple, orange, or cherry and less than 2 percent is raspberry and apple juice concentrate, the report says.

Other recommendations include adding a caffeine content per serving disclosure on food labels, updating the policy on “0 trans fat claims,” establishing greater restrictions on the use of the word “natural,” and requiring products made with whole grains to disclose the percentage of total grains that are whole.

Click [here](#) to read the report in its entirety.

**Why it matters:** The FDA has stepped up its enforcement of labeling claims under the Obama administration, and the report, containing specific proposals and documented examples, could be persuasive for regulatory reform.

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## Kim Kardashian Sued for Defamation Over Tweets

**Reality TV star Kim Kardashian was sued for libel and defamation based on two Tweets she made about a diet company.**

In early 2009, a news story reported that Kardashian, known for E!’s *Keeping Up With the Kardashians* and appearing on ABC’s *Dancing With the Stars*, was one of several celebrity fans of the Cookie Diet. Dr. Sanford Siegal, creator of the Cookie Diet, linked to the news story on the diet’s Web site.

But Kardashian – a spokesperson for QuickTrim, another diet plan – took to her Twitter account to set the record straight. In two separate Tweets, she wrote: “Dr. Siegal’s Cookie Diet is falsely promoting that I’m on this diet. NOT TRUE! I would never do this

### UPCOMING EVENTS

January 20, 2010  
Webinar

Topic: "New Advertising and Marketing Guidelines and Priorities: How to Stay Compliant with the FTC"

Speaker: [Jeff Edelstein](#)

[for more information](#)

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January 21, 2010  
American Bar Association  
Teleconference

Topic: "Strategies for Challenging Competitor's False Advertising"

Speaker: [Terri Seligman](#)

[for more information](#)

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January 21-22, 2010  
6th Annual Film, TV & New  
Media Law Conference

Topic: "Brand Integration Deals"

Speaker: [Jordan Yospe](#)

Millennium Biltmore Hotel  
Los Angeles, CA  
[for more information](#)

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January 21-22, 2010  
6th Annual Film, TV & New  
Media Law Conference

Topic: "Trademark Rights for the Entertainment Lawyer: Use of Trademarks in Creative Works"

Speaker: [Mark Lee](#)

Millennium Biltmore Hotel  
Los Angeles, CA  
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January 26-27, 2010  
American Conference

unhealthy diet! I do QuickTrim!” This was followed by: “If this Dr. Siegal is lying about me being on this diet, what else are they lying about? Not cool!”

She also sent Dr. Siegal a cease and desist letter, seeking removal of the link from the Cookie Diet Web site (which his complaint states he removed).

Dr. Siegal responded by filing a lawsuit in Florida state court. He claims Kardashian’s Tweets are false and defamatory and that she has a “commercial motive” to defame the diet because of her endorsement deal with QuickTrim.

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

**Why it matters:** The case exemplifies that the potential for liability still exists even with the 140-character limit of Twitter, and sends the message that those who Tweet should use caution when they comment on other people and products. If the suit goes forward, the defamation questions will focus on whether or not calling someone a liar is truly defamatory and whether or not Kardashian’s statement that the Cookie Diet is unhealthy is a factual statement, or merely her opinion.

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## FTC Approves Two Reports to Congress on Use, Enforcement of the Do Not Call Registry

**As required by the Do Not Call Registry Fee Extension Act of 2007, the Federal Trade Commission submitted two reports to Congress last week.**

The Registry now has more than 191 million active registrations, with more than 18 million new phone numbers registered during the 2009 fiscal year, according to the first report, a biennial report documenting the Registry’s use. In addition, roughly 45,000 telemarketers, sellers, and exempt organizations like charities paid more than \$15.5 million in fees for access to the Registry. The report also details new procedures launched by the FTC last year to track disconnected and reassigned phone numbers.

The second report is a one-time report on enforcement efforts and consumer perceptions of the Registry’s effectiveness. Enforcement efforts have resulted in more than \$22 million collected as penalties from Registry violators. The report also discusses outreach programs conducted by the FTC to increase awareness of the Registry, particularly among senior citizens and African-American and Hispanic consumers.

While a 2007 poll found that 86 percent of survey participants were familiar with the Registry and 72 percent were in fact registered, some confusion still exists, the report noted. Calls from debt collectors, for example, are routinely reported to the FTC but are not prohibited unless they are made as part of a “telephone solicitation.” Calls promoting

Institute's 23rd National Advanced Forum on Advertising Law

Speaker: [Linda Goldstein](#)

New York Marriott Downtown  
New York, NY  
[for more information](#)

...

February 3, 2010  
WOMMA Wine Wednesday

Speaker: [Anthony DiResta](#)

Office of Manatt, Phelps & Phillips  
Los Angeles, CA

[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](#)

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### Our Practice

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candidates or ballot initiatives are also allowed. However, the FTC received “scores” of complaints from consumers in the 2009 fiscal year because of calls from the Obama and McCain campaigns, as well as the Republican and Democratic National Committees.

To read the text of the first report, click [here](#).

For the second report, click [here](#).

**Why it matters:** The reports document a significant increase in awareness and use of the Do Not Call Registry. With almost 200 million registered phone numbers – and growing each year – violators should expect to face continued enforcement actions by the FTC.

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## Court Rules That Apple Can Be Sued Over Gift Card Marketing

**A class action lawsuit against Apple over its gift card marketing survived a motion to dismiss.**

Daniel and Barbara Owens filed a class action suit in June 2009 alleging that Apple violated Illinois’ consumer fraud statute and committed a breach of contract by changing the prices of iTunes songs. The plaintiffs claimed that they purchased iTunes gift cards and Apple advertised that they could use the cards to purchase songs for 99¢ each – and then raised the price on certain songs to \$1.29. The plaintiffs sought a 30¢ refund for each song they purchased plus attorneys’ fees and costs. Apple filed a motion to dismiss, but a U.S. District Court ruled that the suit could continue.

Although Apple argued that its gift cards provided \$15 or \$25 worth of entertainment and that price restructuring for individual songs didn’t change that amount, the plaintiffs contended that Apple’s guarantee to price songs at 99¢ was part of the basis for the bargain. “There is nothing vague about Apple’s representation, ‘Songs are 99¢ and videos start at \$1.99.’ As plaintiffs assert, Apple used qualifying language regarding the price of videos but used no such qualifier regarding the price of songs,” the court said. Further, the court said the plaintiffs’ consumer fraud claim could survive because they successfully plead that Apple engaged in a deceptive act and the plaintiffs relied upon it – i.e., the plaintiffs relied upon the plain meaning of the representation, “Songs are 99¢.”

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

**Why it matters:** While the case is still in the early stages of litigation, the court’s decision suggests that an advertised price effectively guarantees that price for the life of the ad, and changing the price while the ad is still in market can run a company the risk of a consumer class action.

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