

American Conference Institute's 23rd National Advanced Forum on

advertising law

Solutions and strategies for meeting new media law challenges
in a changing regulatory environment

January 26-27, 2010 | New York Marriott Downtown | New York, New York

Learn practical solutions for meeting the increasingly complex challenges now faced by advertisers:

- **NEGOTIATING** and managing complex campaigns involving multiple parties and media platforms
- **AVOIDING** privacy risks when your marketing tactics incorporate online interaction with customers
- **UPDATING** policies to comply with new guidelines on engaging in behavioral marketing
- **COMPLYING** with regulatory requirements while benefitting from the popularity of Blackberries, iPhones and other devices
- **WINNING** claim substantiation battles
- **PREPARING** for increased government scrutiny of green claims and celebrity endorsements

INDUSTRY INSIGHTS AND REAL-WORLD SOLUTIONS FROM:

Beacon Street Girls	Nationwide Insurance
Children's Advertising Review Unit	NBC Universal
Comcast	Nokia
Dannon	Rainbow Media
Del Monte Foods	Sony Online Entertainment
ePrize	Sprint Nextel
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MasterCard Worldwide	The Washington Post
National Advertising Division, BBB	Warner Home Video
	Wyeth

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Enhance your conference experience by attending the interactive master class on Thursday, January 28, 2010:

Implementing an Effective Privacy Compliance Program

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It's a New Ballgame and You Have to Know the Rules: Get the Information You Need as Companies Turn to Complex New Marketing Concepts

American Conference Institute's 23rd National Advanced Forum on Advertising Law is tailored to provide high-level, detailed information that you can apply directly to your practice. Our faculty of experienced counsel from a diverse, cross-section of industries will go well beyond identifying trends. They will provide you with expert negotiating strategies and practical tips for avoiding the latest legal and regulatory pitfalls. Learn how other companies are:

- Structuring and synchronizing promotions that incorporate social networking and other online sites alongside more traditional channels
- Identifying all third-party content that raises IP ownership concerns or requires authorization
- Safeguarding consumer privacy and setting parameters for using information
- Weighing whether to make environmental claims about their products
- Incorporating recent guidelines into endorsement contracts and programs
- Keeping federal and state regulators at bay

In addition to providing the most comprehensive content, ACI's 23rd National Advanced Forum on Advertising Law

also delivers excellent networking opportunities. Most of our attendees are in-house counsel and marketing executives from leading advertisers. There will be many opportunities throughout the conference to interact with other attendees and exchange strategies. This advanced forum offers you the opportunity to meet leaders in the industry and have substantive discussions on the changing issues faced by advertisers today.

You can add value to your attendance by taking advantage of our interactive workshop. **The Master Class on Implementing an Effective Privacy Compliance Program** will provide answers to many of your most important concerns relating to potentially usurping the rights of internet users and other customers as developing technologies lead to new marketing tactics. Because all attorneys practicing in this area require a greater understanding of the nuances of privacy law, this hands-workshop will provide you with the information you need to help develop proper corporate safeguards and avoid privacy-related liability.

Register now to ensure your place at this timely and industry-leading event! Call 1-888-224-2480, fax your registration form to 1-877-927-1563, or register online at www.americanconference.com/advertisinglaw

New Administration, Regulations and Marketing Platforms = New Challenges

Many of the latest trends in advertising pose serious regulatory and legal risks, and recently issued guidelines and changing government priorities under the new Obama Administration have upped the ante for compliance. In addition, as companies decide to utilize cutting-edge advertising platforms and/or new types of claims to get their products noticed, their counsel need to know how to negotiate the different pieces of complex campaigns, avoid privacy violations and consumer litigation, and prevent government scrutiny. Advertising promotions today are often multi-channeled, combining traditional media with online promotions, live events, and tie-ins with big box retailers, and complex contests that invite users to submit creative content. It is difficult to negotiate and coordinate many different components of a promotion and ensure that a cohesive campaign has been put into place. Attend this event to learn practical solutions to these challenges in this new era of advertising and promotional campaigns.

CONTINUING LEGAL EDUCATION CREDITS

CLE Credits

Accreditation will be sought in those jurisdictions requested by the registrants which have continuing education requirements. This course is identified as nontransitional for the purposes of CLE accreditation.

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8:15 Registration & Continental Breakfast

9:00 Co-Chairs' Opening Remarks



Darren A. Bowie

Legal Director, North America
Nokia Inc.



Jeffrey A. Greenbaum

Partner
Frankfurt Kurnit Klein & Selz PC

9:15 Advertising Law 360©: Coordinating and Managing Complex Promotions Using Multiple Media



Michael L. Grazio

Vice President, Worldwide Marketing Counsel
MasterCard Worldwide | Law Department



Ndidi A. Orij

Counsel | Legal Affairs
NBC Universal, Inc.



Iris Temple

Counsel, Legal Affairs
Rainbow Media Holdings LLC

Theresa Beyer

VP, Activation and Promotion
American Movie Classics Company LLC

- Coordinating campaigns involving multiple parties and employing both traditional and new distribution channels
 - structuring rights and roles
 - negotiating terms for cross-promotions
- Overcoming issues that arise when attempting to synchronize activities with social networking sites, broadcast media, magazines and online and big box retailers
- Setting terms for practices designed to generate a cross-media buzz
- Identifying all third-party rights that require authorization
 - negotiating necessary licenses
- Including consumer-generated content in your promotional activities
 - defining ownership rights to the IP: do you want to own it?
- Injecting live consumer participation directly into broadcasts
 - understanding potential consent issues
 - structuring rules for inclusion of the content
- Performing effective legal due diligence prior to engaging in guerilla marketing and hosting live events
- Having a proper global perspective for international campaigns
 - overseas compliance concerns
 - IP infringement risks

10:30 Morning Coffee Break

10:45 Connecting Safely with Consumers via the Exploding Popularity of Social Networking Sites

Dana Lira

Vice President, Business & Legal Affairs
Warner Home Video



Andra Dallas

Staff Attorney
Children's Advertising Review Unit



Addie Swartz

CEO
Beacon Street Girls



Andrew S. Zaffron

EVP and General Counsel
Sony Online Entertainment LLC

- Applying real world federal and state regulations to cyber-world social networking practices
- Understanding and taking special precautions against the key privacy risks
- Anticipating relevant IP concerns relating to copyright, trademark and copyright law
 - preventing trademark infringement and copyright dilution and liability when marketing through blogs and social networking sites
- Obtaining proper intellectual property clearances
- Maintaining control over IP assets
 - peer marketing programs
- Contractually addressing concerns relating to space placement and other content on the site
- Linking your proprietary content to a networking site
 - protecting against opening yourself to potential risks
- Requirements and precautions when engaging in discussion relating to your product on social networking sites
 - assessing when the CAN-SPAM Act may apply
 - avoiding "deceptive" practices that can create FTC concerns
- Implementing effective disclaimers to shield the advertiser from liability
- Avoiding landmines (and regulatory scrutiny) when engaging in online practices that might lure underage users
 - ensuring COPPA and CARU Compliance for social networking sites
 - special nuances for chat rooms, forums, message boards, and blogs
 - recognizing when it is necessary to obtain verifiable parental consent, and how to go about it
 - fitting into one of the parental consent exceptions
 - new regulatory developments at the state level
- Getting people to "tweet" and blog about your products without opening the door to potential liabilities
 - steering clear of pitfalls relating to providing different types of compensation to generators of online content

12:00 Networking Luncheon

1:15 Engaging in Compliant Green Marketing Practices in an Uncertain Regulatory Environment

Sally L. Davis

Corporate Counsel
S. C. Johnson & Son, Inc.



David G. Mallen

Associate Director
National Advertising Division

Erich Rhyhbart

Senior Counsel, Intellectual Property
Staples

Ricki J. Schweizer

Assistant General Counsel
The Interpublic Group of Companies, Inc



Jeffrey A. Greenbaum

Partner
Frankfurt Kurnit Klein & Selz PC

- Reconsidering the way in which green claims are made in light of the FTC’s recent solicitation of comments, testimony before Congress and green marketing workshops
- Analyzing the implications of the recent FTC actions and settlement agreements relating to makers of “biodegradable” claims
- Incorporating the FTC’s current Green Guides into your advertising and marketing practices
 - developing a checklist to avoid claims that will trigger regulatory scrutiny
- Substantiating specific green-related claims
 - recyclability
 - sustainability
- Challenging competitors’ green claims
- Understanding respective state laws and their environmental claims requirements
- Recognizing the complaints the FTC is receiving in this area so as to avoid the same mistakes
- Preparing for increased government scrutiny and enforcement

2:30 Afternoon Refreshment Break

2:45 Developing Effective Claim Substantiation Policies

Nancy Dowling

Senior Marketing Counsel
Danone North America Legal Department



David M. Moss

Vice President & Senior Counsel
Wyeth Consumer Healthcare, U.S.

Jeffrey Smith

VP Legal & Deputy General Counsel
Comcast Cable Communications Inc.



Lynn K. Neuner

Partner
Simpson Thacher & Bartlett LLP



Thomas P. Jirgal

Attorney
Loeb & Loeb LLP

- Crafting practical standards for determining when you have achieved a “reasonable basis” for your claims
- Integrating lessons from recent NAD positions and FTC and court substantiation cases into your advertising campaigns
 - recognizing what the regulators view as a substantiated claim
 - identifying claims that are on the FTC’s radar
- Identifying all claims that require substantiation
 - ensuring that you will not be asked to substantiate an unanticipated claim
 - recognizing implied claims
- Understanding how implied claims and consumer interpretations can affect your substantiation arguments
- Establishing an effective substantiation procedure team
 - getting lawyers and scientists to speak the same language
 - knowing the right questions to ask
- Developing internal substantiation standards for often-scrutinized advertising techniques

- testimonials, demonstrations, establishment claims, puffery
- Determining when it’s necessary to conduct market research
 - fitting a survey for a particular purpose
- Designing a clinical study
 - developing consumer behavior and psychology evidence
 - using consumer perception data
- Working with market researchers and experts to debunk competitor’s claims
- Making sense of and describing results

4:00

Resolving Disputes Involving Competitors’ Comparative Claims: Interactive Case Study



Annie M. Ugurlayan

Senior Staff Attorney
National Advertising Division



Andrew Sacks

V.P., Legal
T-Mobile USA



Linda Goldstein

Partner
Manatt Phelps & Phillips LLP



Norman C. Simon

Partner
Kramer Levin Naftalis & Frankel LLP

Using an illustrative hypothetical example, industry experts will drill down and offer specific examples and guidance in order to provide a forum for illumination and discussion of the various considerations and strategies that come into play when fighting a claim substantiation battle.

- Outlining the possible courses of action when you believe a competitor’s claim cannot be substantiated
 - exploring options for resolving disputes short of legal action
 - obtaining buy-in from executives to try a non-legal route first
 - establishing a good relationship with competitors
 - using public relations initiatives to fire back at competitors
- Determining when it makes sense to ignore the competitor
 - weighing what may constitute mere puffery
- Timing your challenge to achieve the best outcome
 - how long can you wait to bring a challenge and how might the timing affect your ability to get a temporary restraining order?
- Assessing whether to initiate an NAD proceeding
- Working with the networks to bring down a false or misleading television campaign
- Determining whether a referral to the federal or state regulators will give you a desired outcome
 - how likely is it that the regulators will look into the claim?
 - how desirable an option is it in terms of what the regulators will actually do?
 - preventing a referral from resulting in scrutiny of your company
- Business implications and strategies when litigation is your best or only option
 - managing expectations as to what you can expect from litigation
 - assessing the major factors impacting the expense and timing of litigation
 - evaluating potential settlement scenarios

5:15

Conference Adjourns to Day 2

Cocktail Reception
Hosted by:



8:00 Continental Breakfast

9:00 Successfully Adapting to a Changing Government Landscape: Current Regulatory Hot Buttons



Leonard L. Gordon
Director
Federal Trade Commission



Lydia Parnes
Partner
Wilson Sonsini Goodrich & Rosati

- Analyzing recent state and federal regulatory priorities
- Assessing what can we expect from the FTC under the Obama Administration in the coming year
 - practical implications of recent enforcement trends
 - preparing for the coming enforcement initiatives
- Analyzing the recent enforcement focus of active state AG offices
- Implications raised by recession-related pressures on companies and consumers and particular advertising conduct that is attracting inquiries
 - effect of competing for a shrinking pool of consumer dollars
 - problematic ads promising relief from financial problems
 - marketing designed to solicit personal information
- Learning from recent enforcement to minimize your risk of being the target of an investigation
- Insights into potential developments in Congress relating to advertising regulation
 - potential changes to tax deductions for certain types of ads

10:00 Morning Coffee Break

10:15 Complying with New Guidelines and Safeguarding Consumer Privacy When Engaging in Behavioral Marketing

Timothy Jucovy
Associate Counsel
The Washington Post



Edward Palmieri
Deputy Chief Privacy Officer
Sprint Nextel



Erin M. Egan
Partner
Covington & Burling LLP

- Clarifying what types of activity constitute behavioral marketing
- Surveying what if any laws are specifically applicable to this type of marketing conduct
 - impact of Maine's new law restricting the use of information about minors
- Complying with the new self-regulatory guidelines being implemented by four major trade bodies
 - understanding what the four major trade bodies are seeking to accomplish
 - how the new guidelines provide for greater notice and transparency
 - what types of advertising are excluded under the guidelines?

- Insights from the FTC's 2009 staff report on Principles for Online Behavioral Advertising
- Examining Congress's interest in regulating behavioral marketing and preparing for the possibility of legislation that will place controls on this type of advertising
- Looking at emerging trends in behavioral marketing
- Establishing effective parameters for utilizing information – balancing privacy concerns with the ability to use the data that is collected
 - will the information be tied to a person, an IP address or some other identifying characteristic?
 - how long will the information be stored?
 - how can the information be used?
- Providing proper notice to consumers and obtaining adequate consent from them
 - what privacy policies are mandated?
 - assessing potential liabilities from data security breaches
- Incorporating recent FTC activity relating to online data collection activities into the disclosures you make to consumers
- Analyzing relevant state AG enforcement efforts
- Contracting with third party service providers who will collect the data
 - negotiating contract provisions that reflect industry standards
 - drafting warranties and protections to ensure that customers' information is protected

11:15 Negotiating Talent and Endorsement Deals under the New Guides

Chris Garber
Assistant General Counsel
Nationwide Mutual Insurance Company



Niles Patel
Counsel
Frost Brown Todd



Ronald Urbach
Partner
Davis & Gilbert LLP

- Understanding how the new FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising will bring increased scrutiny on recently developed promotional strategies
 - avoiding pitfalls relating to blogs, message boards, and viral marketers
 - anticipating what particular uses of endorsements will be alleged to be deceptive under the new guidance
- Moving beyond a general understanding and getting down to the nuts and bolts of the endorsement agreement
- Ensuring you are negotiating with the right party
- Choosing the proper form of agreement
- Preventing the talent from walking before the deal is signed
- Minimizing the consequences when the talent is incapacitated or dies
- Structuring a morals clause
- Getting special approvals when the talent is a major star
- Protecting your exclusivity
- Pros and cons of multi-year agreements
 - negotiating exit fees
- Setting effective terms for giving and getting specific rights

12:15 Networking Luncheon

1:30 The "Reality" of Developing Bulletproof Contests and Sweepstakes that can Withstand Enforcement and Litigation



Timothy Ernst

Vice President and Associate General Counsel
Del Monte Foods



Gabriel H. Karp

EVP, General Counsel
ePrize



Kelsey Joyce

Managing Attorney - Marketing
T-Mobile USA



Robert Laplaca

Partner
Levett Rockwood P.C.



Scott Schleifstein

Partner
Cohen Silverman Rowan LLP

With technology changing faster than the law can keep up, this session will work through a hypothetical contest from start to finish and examine all of the things you should be looking for when presented with a new sweepstakes/contest proposal. Contests and sweepstakes can be particularly challenging because they entail so many different elements, and often multiple parties are involved in the promotion. The laws governing sweepstakes and contests can be difficult to apply to technological changes, and they differ throughout the 50 states. In addition the hot trend of inviting consumers to create and submit content has added additional complications. Managing and controlling all of the components of a sweepstakes without violating state and/or federal regulations and steering clear of consumer class actions is extremely difficult.

- Factoring recent legislative and judicial developments into your contest strategies
 - meeting disclosure requirements under the amendments to the California sweepstakes law
 - complying with the application of CAN-SPAM to online sweepstakes
 - incorporating latest guidance relating to use of text messaging
- Understanding potential risks when inviting consumers to create content
 - providing for screening of UGC
- Drafting the contest rules
 - determining when abbreviated contest/sweepstakes rules are permissible
 - what must the abbreviated rules state?
 - considerations for "global" or "international" sweepstakes and/or skills contests
- Preparing a checklist that will identify what steps need to be taken and what pitfalls to look out for
 - setting eligibility parameters
 - identifying perceived "fairness" issues proactively to avoid entrant dissatisfaction
- Ensuring that sweepstakes online and through new media devices comply with federal and state law
- Dealing with third-party service providers when contests have both an online and a retail component
- Preventing privacy violations with consumer data collected during contests
- Implementing a monitoring and review process to prevent inappropriate content

- Obtaining all the necessary rights clearances associated with the winning entry
- Complying with differing gaming statutes when engaging in a multistate promotion

2:45 Afternoon Refreshment Break

3:00 Blackberries, iPhones, and other Smart Personal Devices: Complying with Mobile Marketing Regulations



Darren A. Bowie

Legal Director, North America
Nokia Inc.



Andrew B. Lustigman

Principal
Lustigman Firm, P.C.

- Understanding the interplay between the FTC and the FCC
- Determining which laws regulate mobile communications
 - TCPA
 - CAN-SPAM
 - state child protection registries
 - examining the evolution of the laws as new technology emerges
- Meeting requirements for pre-recorded messages on cell phones
- Text messaging rules and requirements
 - impact of charging standard or premium text message rates in "text-to-win" promotions
- CAN-SPAM update – guidelines to follow when mass e-mailing subscribers
- Managing opt-ins and opt-outs
- Drafting disclosures that will withstand regulatory scrutiny
- Developing rules for SMS and wireless email
- Minimizing liability concerns with location-aware services
- Recognizing what federal and state enforcers deem to be problematic activities

4:00 Crafting a Post-"Crash" Agency/Client Agreement That Satisfies the Needs of Both Parties



Anne Ward Guinan

Assistant General Counsel
imc2, LLC



Barry M. Benjamin

Partner
Kilpatrick Stockton LLP

- Addressing recession-related business pressures
 - Incorporating terms that afford additional protection against current economic risks
- Identifying the core details that need to be included in the agreement
- The letter of intent: protecting your interests in the interim period before an agreement is finalized
- Exclusivity with flexibility: give clients flexibility without putting the agency out of business
- Reaching common ground with regards to agency compensation
 - outlining a detailed scope of services and relatively firm estimates
 - establishing how expenses will be paid
 - linking payment to performance

- Determining ownership of materials
 - preparing for burgeoning issues that may be unanticipated at the outset of the deal
 - non-advertising use of advertising concepts and other materials that are atypical for creation by advertising agencies
 - determining who will derive revenue
 - Drafting warranties and indemnifications
 - Allocating risk when one side wants to move forward with an idea the other side deems to be too risky
- 5:00 Conference Concludes

Master Class | Thursday, January 28, 2010 | 9:00 a.m. to 12:00 p.m.
(Registration and continental breakfast begin at 8:30 a.m.)

Implementing an Effective Privacy Compliance Program



Gary A. Kibel
Partner
Davis & Gilbert LLP



Tracy Pulito
Deputy Chief Privacy Officer
Starwood Hotels & Resorts Worldwide, Inc

As pressures continue to mount relating to protecting the privacy rights of internet users and other customers as they make use of developing technologies, there is a great deal of confusion regarding exactly what types of conduct are problematic and what needs to be done now to protect against future liabilities. It is thus imperative that all attorneys practicing in this area have a high degree of comfort in understanding the current privacy-related requirements and enforcement trends that impact on advertisers. Emerging increased enforcement in this area and the new privacy provisions contained in proposed legislative initiatives at the state and federal levels are upping the ante for compliance, and they must be closely followed and analyzed. Attendees of this timely Master Class will learn, through the use of illustrative hypotheticals, to more effectively navigate a fast-changing area that is of great concern to consumers, to Congress, and to nervous corporations. Understand the nuances behind how the latest uses of technology in advertising may impact on privacy interests, and take away critical knowledge of what you must do proactively to develop proper safeguards.

- Understanding the current playing field: what laws and self-regulatory guidelines apply
 - factoring current state and federal proposals for increased protections into your privacy strategies
- Recognizing how particular marketing practices raise privacy issues
 - specific issues relating to contracts with internet search engines, “pay-per-click,” and online collection of data?
- Privacy concerns raised by the manner in which certain blogs are developed online, including analysis of inclusion of user comments and promotional content and how the content may be accessed and stored?
- What concerns need to be contractually addressed to protect against breaches of customer information
 - IT support and guarantees
- The impact that the rise of social networking has had on the privacy debate and how personal information is being used
- Setting up an effective compliance regime
- Navigating special risks relating to targeting and collecting information about children
 - implementing proper age screening techniques

Who you will meet:

- In-house counsel for any company involved in advertising or marketing its products or services
- Marketing & advertising directors
- Brand managers
- Attorneys who specialize in the following practice areas:

- Advertising	- Consumer protection	- IP
- Marketing	- E-commerce/internet	- Licensing
- Promotions	- Trademarks and copyright	
- Entertainment/media	- Privacy	

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advertising law

Solutions and strategies for meeting new media law challenges in a changing regulatory environment

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Interactive Master Class –
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Implementing an
Effective Privacy
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