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CLIENT ALERT

Recent Happenings in Advertising & Product Risk Management – October 2017

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This news bulletin is provided by the Advertising & Product Risk Management Group of Crowell & Moring. If you have questions or need assistance, please contact Chris Cole, Cheryl Falvey, or any member of the APRM Group.

FEATURED ARTICLE

Clear & Conspicuous Danger: Avoiding the Pitfalls of Online Endorsements

On September 7, 2017, the Federal Trade Commission revised its Endorsement Guides FAQs to help anyone online – from bloggers and influencers to recipients of free products – understand how to clearly disclose any unexpected material connection between an endorser and a company when making statements online about the company's product. The latest revisions clarify that commonly-used disclosures are generally ineffective in the eyes of the FTC and provide examples of Do's and Don'ts for improving disclosures.

Background: When do the Endorsement Guides Apply?

The endorsement guides apply to only those endorsements "**made on behalf of a sponsoring advertiser**." The FAQs explain:

> "[A]n endorsement would be covered by the FTC Act if an advertiser – or someone working for an advertiser – pays you or gives you something of value to mention a product. If you receive free products or other perks with the expectation that you'll promote or discuss the advertiser's products in your blog, you're covered. Bloggers who are part of network marketing programs, where they sign up to receive free product samples in exchange for writing about them, also are covered."

The test boils down to what information would affect the "**weight or credibility your readers give to your recommendation**." As such, erring on the side of disclosure is essential. Will a third-party care that you received a cents-off company coupon on the purchase of a lipstick, in exchange for an online review? Possibly. But will a third-party want to know that the one-week cruise you're raving about on Twitter was given to you for free? Definitely.

What is a Clear and Conspicuous Disclosure?

And not only is erring on the side of disclosure key, but any disclosure must also be "**clear and conspicuous**." That means that "advertisers should use **plain and unambiguous** language and make the disclosure stand out," and the disclosures should be easy to spot: a disclosure shouldn't be buried in the middle or bottom of a comment box. Basically, the consumer should not have to look for the disclosure; the disclosure should find the consumer first. The FTC suggests that disclosures should be:

- Close to the claims to which they relate.
- In a font that is easy to read.
- In a shade that stands out against the background.
- For video ads, on the screen long enough to be noticed, read, and understood.

- For audio disclosures, read at a cadence that is easy for consumers to follow and in words consumers will understand.

Disclosures must also comply with basic truth-in-advertising principles – that is, all claims must be substantiated. The FTC thus advises that endorsements must "represent the accurate experience and opinion of the endorser, and that:

- You can't talk about your experience with a product if you haven't tried it.
- If you were paid to try a product and you thought it was terrible, you can't say it's terrific."

So if you're a blogger and excited that a new face cream seems to have made your pimples disappear, you still can't say "this product cures acne!" unless the advertiser makes its own claims about the cream's ability to cure skin conditions, or you asked the advertiser whether there is substantiation for the claim. Making this excited statement without substantiation can have you, the blogger, on the hook for the false statements.

Embedded within each section of the FAQs are examples of proper, sufficient disclosure language, as well as statements that are not enough. Some examples:

OK	**NOT ENOUGH**
"I'm a paid consultant to the marketers of XYZ Company"	"#client" or "#advisor" or "#consultant"
"I work with XYZ brand"(where XYZ is a brand name)	#ambassador
#ad[XYZ Company]	#Thanks XYZ company!
"#XYZ-Ambassador"	A blanket disclosure "many of the products I discuss on this site are provided to me free by their manufacturers."
"I received this product for free from XYZ company"	Hyperlink or button that states "DISCLOSURE" or "LEGAL."
"XYZ Resort paid for my trip" or "Thanks to XYZ Resort for the free trip.	Disclosure after the "click more…"
"#contestXYZ" or "#sweepstakesXYZ"	"XYZ is the best!"

"#XYZ-Employee"	"#XYZsweeps!"
	"#employee"

Finally, many companies now use a network of social media influencers and bloggers to promote products. While the actions of these influencers can feel out of a company's control, the FTC has made clear that the company itself is responsible for any comments those influencers/bloggers make in relation to its products. The FTC therefore recommends that advertisers and companies have **reasonable programs in place to train and monitor members of their network**. "The scope of the program depends on the risk that deceptive practices by network participants could cause consumers harm – either physical injury or financial loss. For example, a network devoted to the sale of health products may require more supervision than a network promoting, say, a new fashion line." According to the FTC, these are some elements every program should include:

- Given an advertiser's responsibility for substantiating objective product claims, explain to members of your network what they can (and can't) say about the products – for example, a list of the health claims they can make for your products, along with instructions not to go beyond those claims.
- Clearly instruct members of the network on their responsibilities for disclosing their connections to you. Consider obtaining a signed statement of responsibility from the influencer agreeing to comply.
- Review endorsements before they are posted to confirm that they comply with your Company's guidelines.
- Periodically search for what the influencers you work with are saying and to confirm that the disclosures are actually clear and conspicuous.
- Follow up with the influencers you work with if you identify non-compliant practices. Terminate your relationship those who do not comply with your requests to make changes to their disclosure practices or claims.

As the FTC continues to nimbly adapt to quickly changing technology, the FTC's FAQs are thorough, and even welcome further questions. We encourage any company relying on the dissemination of online opinions about their products – whether through their own employees, hired influencers, or loyal customers who receive free products – to familiarize themselves with the FTC Endorsement Guides and the latest FAQs. It will save a lot of #headaches in the future.

For more information, contact: Preetha Chakrabarti

ARTICLE

Proposed Senate Bill Would Harmonize National Regulation of "Made in USA" Advertising Claims

One enduring puzzle of interstate commerce is the fact that the common advertising phrase "Made in the USA" may mean different things under federal and state law. To the Federal Trade Commission (FTC), the claim means that "all or virtually all" of the product in question was assembled or manufactured in the United States, even if the product includes imported content

such as raw materials and component parts. In California, by contrast, the claim means that not only the finished product, but also 90-95 percent of the product's components, were "made in America."

In May of this year, the Senate Committee on Commerce, Science, and Transportation favorably reported to the full Senate a draft bill from Senator Mike Lee [R-UT] that would resolve this conundrum by making the FTC solely responsible for regulating labeling claims regarding domestic origin, such as "Made in the USA," "Made in America," and equivalent claims (MUSA claims). If enacted, the Reinforcing American-Made Products Act of 2017 (S.118) would preempt conflicting state laws for products sold, advertised, or offered for sale in interstate or foreign commerce. By preventing states from enacting a conflicting "patchwork" of regulations that impose more stringent standards for MUSA claims that those required by the FTC, the proposed bill would simplify compliance for consumer-product companies that advertise and sell their goods across state lines. Nowhere is that compliance issue more challenging than in California, where the state's uniquely restrictive MUSA statute, even after significant amendment in 2015, requires special attention from companies trying to do business in the nation's largest consumer market.

The New Status Quo: How the FTC Regulates MUSA Claims Nationally

No federal statute imposes specific standards for making MUSA claims. Instead, under 15 U.S.C. § 45a (Labels on Products), the FTC regulates MUSA claims by applying its broad authority to prevent unfair or deceptive acts and practices under Section 5 of the FTC Act (15 U.S.C. § 45(a)(1)).1

The FTC identifies two broad categories of MUSA claims: unqualified claims and qualified claims. Unqualified claims do not acknowledge any non-U.S. processing or content: for example, labels that simply state "Made in the USA" or "Made in America." Qualified claims, by contrast, disclose that only a portion of the production or manufacturing process occurred in the United States: for example, "Made in the USA with U.S. and foreign materials," or "Assembled in the USA from foreign parts."

Qualified claims are unlikely to be the target of FTC enforcement attention. The FTC permits all qualified MUSA claims, so long as the claim is accurate and does not express or imply more U.S. content than is actually present.2 FTC closing letters demonstrate that the agency is often lenient regarding the amount of foreign content, so long as the last "substantial transformation" of the product occurred in the States.3

Unqualified claims, by contrast, are subject to a higher degree of scrutiny. The FTC forbids unqualified MUSA claims unless "all or virtually all" of the product is made in the United States. There is no bright-line objective test for evaluating such claims, but per FTC guidance, (1) the foreign content must be de minimis or negligible; and (2) the final assembly or processing of the product must take place within the United States. Other factors may also be taken into account, including the portion of the product's total manufacturing costs that are attributable to U.S. parts and processing.4

The FTC analysis becomes more complicated still if "all or virtually all" of the finished product is made in the United States, but some of the raw materials are imported. In that case, the FTC looks at both (1) the percentage of the finished product's value attributable to the raw materials and (2) how far removed from the finished product the raw materials are. Under this standard, a gold ring "made" within the United States from foreign gold would likely fail the test for an unqualified MUSA claim, whereas a clock radio with a plastic case made from imported petroleum could very well pass.

When the FTC becomes aware of a potential violation, either on its own initiative or via a competitor or consumer watchdog report, FTC staff will typically contact the company via informal letter explaining the MUSA requirements, outlining the concern

of potential violation, and asking for a response. The company must then provide substantiation of the MUSA claim to satisfy the FTC. If the company cannot substantiate its claim, but corrects its erroneous labels and institutes internal measures to ensure future compliance, the FTC will typically issue a closing letter with no further action. In the rare cases that proceed to litigation, defendants rarely fare well.

Changes Ahead: How California Regulates MUSA Claims

If passed, the proposed bill stands to have the most dramatic impact on companies currently marketing products in California—the only state with specific "Made in the USA" labeling laws. California MUSA regulations are currently not preempted by the FTC regulations because they do not prevent compliance with FTC standards, and do not impede the FTC's regulatory objectives.6 That analysis would change immediately if the proposed bill becomes law, because the FTC standard would then become both the floor and the ceiling for MUSA claims.

Although California's regulations were recently relaxed to better match the FTC regulations,7 its standards for MUSA claims are still significantly more restrictive than the FTC's. Similar to the FTC regulations, California law does not subject qualified MUSA claims to the same stringent standards as unqualified claims. Though the language of the California statute is silent, courts have held that qualified MUSA claims such as "Made in the USA of globally sourced components" are permissible under section 17533.7 of California's Business and Professions Code.8 Qualified claims must still comply, however, with California false advertising law, meaning that they must "accurately describe[] where a product and all its component parts are sourced and manufactured."9

California currently limits unqualified MUSA claims to products in which at least 95 percent of the article, unit, or part was made, manufactured, and produced in the United States.10 This standard may be relaxed to 90 percent upon a showing that the article, unit, or part in question cannot be produced or obtained within the United States for reasons other than cost (if, for example, no domestic manufacturer makes the component, or the raw material is not native to the U.S.).[11] Interestingly, California is less restrictive than the FTC with respect to foreign sourcing of raw materials. California permits products made from foreign-sourced raw materials to be labeled "MUSA," so long as the actual making, manufacturing, or producing process that transforms the raw material into a product or product-component occurs within the U.S.12

What Lies Ahead

If enacted, Senator Lee's bill would essentially eliminate the California standard, leaving the FTC standards as a nationally consistent set of MUSA regulations.

Companies marketing MUSA products should monitor the bill's progress and take any necessary steps to ensure compliance with FTC standards. The FTC has been relatively vigorous in enforcing its MUSA labeling standard, issuing approximately 57 investigatory closing letters between 2014 and 2016, with 15 closing letters issued in 2017.

The proposed bill is consistent with the Trump administration's stated commitment to working towards more domestic industry-friendly policies. The Trump administration has demonstrated its interest in highlighting "Made in USA" products, including by declaring the week of July 17, 2017 to be "Made in America Week" in recognition of "the incredible workers and companies who make 'Made in America' the world standard for quality and craftsmanship."13

Similarly, President Trump signed the "Buy American and Hire American" executive order on April 18, 2017 to fully enforce federal guidelines prioritizing the use of American firms and goods in federal projects. These federal guidelines are enshrined in the Buy American Act, which directs the federal government to purchase only American-made goods when possible, but defines American-made goods to be any product assembled in the US with more than 50 percent American-made parts. Companies that sell products to the federal government under provisions of the Buy American Act should monitor the proposed bill to standardize MUSA claims to see if it has a ripple effect on the Buy American Act standards for American-made products.

The proposed MUSA bill, co-sponsored by Lee, Shelley Moore Capito (R-WV), Susan Collins (R-Maine), Deb Fischer (R-Neb), and Angus King (I-Maine), awaits action by the full Senate.

For more information, contact: Michelle Gillette, Peter Miller, Niran Somasundaram

LITIGATION ROUNDUP

The litigation arena for the consumer products industry is as active as ever. Each newsletter we bring you a summary of the most important litigation developments from the past two months, from complaint filings and key court decisions to trial results and settlements. For more information about these and other developments, please visit our Food & Beverage Industry Tracking Report.

Filed

Amazon.com Blinded by Class Action Regarding 'Defective' Solar Eclipse Glasses

A South Carolina couple filed a putative class action in federal court against Amazon.com on August 29, 2017, claiming that allegedly defective solar eclipse glasses sold by the online retailer caused them to experience central blind spots, impaired vision, discomfort, and dizziness after wearing the American Paper Optics glasses to watch the August 21, 2017 eclipse. Plaintiffs seek restitution, an injunction and damages for negligence, negligent misrepresentation, unjust enrichment, breach of warranty, negligent failure to warn, deceptive trade, and consumer law violations. *Thomas Corey Payne et al. v. Amazon.com*, Case No. 2:17-cv-2313-PMD, U.S. District Court for the District of South Carolina.

Equifax Hit With Multiple Suits One Day After Announcing Massive Data Breach

Just one day after disclosing a massive cyberattack potentially affecting the personal data of almost 143 million consumers, Equifax was hit with class actions in Georgia and Oregon. Both lawsuits allege that Equifax failed to secure personally identifiable information (PII), though the Georgia plaintiffs also allege that Equifax knew of the breach as early as late July but elected to keep its customers in the dark. The Georgia plaintiffs seek costs associated with the detection and prevention of identity theft and unauthorized use of their financial accounts, damages arising from the inability to use their PII and access to their account funds, the loss of their privacy, and potential fraud and identify theft posed by their PII being placed in the hands of criminals, while the Oregon plaintiffs request compensation for third party credit repair and monitoring services. *McGonnigal et al. v. Equifax Inc.*, Case No. 1:17-cv-03422, in the U.S. District Court for the Northern District of Georgia, and *McHill et al. v. Equifax Inc.*, Case No. 3:17-cv-01405, in the U.S. District Court for the District of Oregon.

Settled

Beachbody LLC Pays $3.6 Million to Settle Recurring Charge Case

California fitness company Beachbody LLC, which sells supplements and fitness videos such as P90x, has agreed to pay $3.6 million to settle a lawsuit brought by Santa Monica prosecutors accusing it of subjecting customers to recurring credit card charges without consent. Beachbody, which has 23 million customers, will pay $2.6 million in fines and $1 million in restitution to nutrition and health-focused nonprofits, and will now be required to prominently disclose renewal terms, allow subscription cancellations, and issue notifications of renewal dates. The company must also alter its website and provide credible scientific support for the health claims of its supplements, which prosecutors alleged were misleading. After announcing the settlement, the City Attorney called the agreement "an important victory to ensure that consumers will not be subject to recurring charges imposed without their clear approval and consent." *People of the State of California v. Beachbody LLC*, Case No. 55029222, Superior Court for the State of California, Los Angeles County.

Payment Processing Company Pays $52 Million to Restaurants and Retailers to End Bogus Fee Claims

On September 1, 2017, a Georgia federal judge approved a $52 million settlement to end class claims that Mercury Payment Systems LLC, a payment processing company, charged restaurants and retailers fabricated fees in violation of its contracts. The settlement uses an allocation system to account for size and volume differences among the class members and also provides for performance awards to the class representatives. Multiple plaintiffs objected to the deal, including one plaintiff who argued that the $17.33 million in attorneys' fees were unwarranted. Notwithstanding the objections, the court found that the deal was fair and determined that all objections were meritless, ending the class action case filed in January 2016. *Champs Sports Bar & Grill Co. et al. v. Mercury Payment Systems LLC et al.*, Case No. 1:16-cv-00012, U.S. District Court for the Northern District of Georgia.

Verdicts

Johnson & Johnson Hit With $417 Million Award in Talcum Powder Case

A Los Angeles Superior Court jury ordered Johnson & Johnson to pay $417 million in damages to a 63-year-old medical receptionist who developed ovarian cancer after using the company's talcum powder since age 11. The plaintiff claimed that Johnson & Johnson knowingly withheld decades of knowledge of talc's dangers from its customers in order to protect sales of the product. The case is the first ovarian cancer talc trial in state court outside of Missouri, where much of the prior talc litigation was centered, and proceeded against Johnson & Johnson alone after the talc supplier was released on summary judgment. The verdict came shortly after the court excluded 'specific causation' testimony by the plaintiff's epidemiology expert, but permitted causation testimony by her gynecologic expert following a lengthy Sargon hearing. *Eva Echeverria et al. v. Johnson & Johnson et al.*, Case No. BC628228, Superior Court of the State of California, County of Los Angeles.

Dismissed/Stayed

Federal Judge Throws Out Portion of False Ad Suit in Generic Viagra Case

On September 8, 2017, a California federal judge dismissed a RICO claim against a nutritional supplement company brought by a competitor alleging the defendants are engaged in false and misleading advertising. According to the plaintiff, the defendant

advertises and sells illegal chemicals (including generic versions of Viagra and Cialis) to consumers as "research chemicals" that are "not for human consumption" in an alleged effort to avoid FDA regulation. The plaintiff alleged that the defendants were engaged in a comprehensive scheme to obtain money and property through fraud, but the judge pointed out that the plaintiff was unable to allege sufficient facts to allege a pattern of racketeering activity. Thus, while the plaintiff's false advertising claims under the Lanham Act remain, the RICO claims were dismissed. *Nutrition Distribution LLC v. PEP Research, LLC, et al.*, Case No. 16cv2328-WQH-BLM, U.S. District Court for the Southern District of California.

Naked Juice Can't Bounce 'No-Sugar Added' Class Action With Unauthenticated Evidence

A California judge rejected Naked Juice's attempts to bounce a putative class action this week, saying that the plaintiff adequately alleged the company's coconut water label was deceptive and misleading. The plaintiff claims that PepsiCo and its subsidiary Naked Juice improperly market coconut water with a "no sugar added" claim on its label in violation of FDA regulations addressing juice products that do not normally contain added sugar. Because coconut water does not typically contain sugar, the plaintiff claims, Naked Juice's label is misleading and illegal. Though Naked Juice insisted that the court should consider a recent letter from the director of the FDA's Center for Food Safety and Applied Nutrition addressing the "no sugar added" concern that it claims dispositively decides the issue in its favor, the judge declined to take judicial notice of the letter as it was not authenticated. Naked Juice intends to file a public records request with the FDA to get an official copy of the letter; in the interim, Naked Juice's motion to dismiss is denied. *Malawi Karim v. Naked Juice Co. of Glendora et al.*, Case No. BC649121, and *Sonia Perez v. Naked Juice Co. of Glendora et al.*, Case No. BC649296, Superior Court of the State of California, County of Los Angeles.

REGULATORY ROUNDUP

With a new executive administration getting its bearings in Washington, the regulatory landscape is in a state of flux—with important changes on the horizon. Each newsletter we bring you a rundown of key developments for the consumer products industry from each of the three main regulatory agencies, as well as the NAD.

CPSC

- CPSC announced on September 7 that it has approved a new federal mandatory safety standard for infant bouncer seats. The standard seeks to improve stability to address tip-over incidents and for the battery compartment to address incidents involving battery leakage, corrosion, and overheating. The new standard is based on the existing voluntary standard, ASTM F-2167-17. This standard has been promulgated pursuant to Section 104 of the Consumer Product Safety Improvement Act of 2008, which requires the Commission to implement safety standards for durable infant and toddler products.
- CPSC announced on August 30 that Home Depot U.S.A., Inc. has entered into a settlement agreement with the agency to resolve allegations that the retailer knowingly sold and distributed recalled consumer products over a four year period. The Company has agreed to pay a civil penalty of $5.7 million and enhance its compliance program. This penalty is significant because it involves claims against a retailer who allegedly sold recalled products in violation of Section

19(a)(2)(B) of the Consumer Product Safety Act which makes it unlawful to sell a recalled product – and not the more typical "failure to timely report" claims against a manufacturer under Section 19(a)(4).

- On August 29, CPSC voted unanimously to remove seven plastics from the requirement to conduct independent third party testing for compliance with the mandatory phthalates prohibitions of children's toys and child care articles.

FDA

- FDA has approved its first biosimilar (Mvasi) for the treatment of cancer. Mvasi is approved for the treatment of adult patients with certain colorectal, lung, brain, kidney and cervical cancers.
- On September 7, FDA announced that it will allow companies to state on product labels that some baby foods can prevent peanut allergies. The new claim will state: "for most infants with severe eczema and/or egg allergy who are already eating solid foods, introducing foods containing ground peanuts between 4 and 10 months of age and continuing consumption may reduce the risk of developing peanut allergy by 5 years of age." This is the first time the FDA has recognized a qualified health claim to prevent a food allergy.
- FDA has made available the first gene therapy in the U.S. The FDA approved Kymriah for certain pediatric and young adult patients with a form of acute lymphoblastic leukemia.
- FDA announced a new strategic initiative to discourage the use of e-cigarettes and other electronic nicotine delivery systems by kids. The agency plans to expand its "The Real Cost" public education campaign to include messaging about the dangers of these products.

FTC

- On July 25, Acting Chairman Maureen Ohlhausen released a summary of the agency's major accomplishments since January. The highlighted accomplishments are in the areas of competition, consumer protection, data security and privacy, economic liberty, regulatory reform, small business, and military consumers.
- On July 25, Acting Chairman Ohlhausen announced the appointment of Bruce Hoffman to be the Acting Director of the FTC's Bureau of Competition. One week earlier, Ohlhausen had announced the departure of Ginger Zhe Jin, the FTC Bureau of Economics Director. Acting Chairman Ohlhausen named Michael Vita, Acting Director of the Bureau.
- The Commission announced on July 21 that it will publish a series of blog posts to help businesses ensure that they are taking reasonable steps to protect and secure consumer data. The blog posts will use hypothetical examples based on lessons from closed investigations, enforcement actions, and questions from industry. The Commission is calling this its "Stick with Security" initiative. Its first blog post entitled "Insight into FTC Investigations" can be found here.
- On August 15, the Commission announced that it had reached a settlement with Uber Technologies, Inc. over allegations that the ride-sharing company deceived consumers by failing to monitor employee access to consumer personal information and by failing to reasonably secure sensitive consumer data stored in the cloud. As part of the settlement, Uber has agreed to implement a robust privacy program and obtain regular, independent audits.

NAD

- On August 1, the Advertising Self-Regulatory Council (ASRC) and Council of Better Business Bureaus (CBBB) announced that Laura Brett has been appointed as director of the National Advertising Division (NAD). Ms. Brett has served as Acting Director of NAD since Andrea Levine, former Director of NAD, retired after 20 years as NAD Director.
- Additionally, on August 24, the ASRC and CBBB announced the appointment of Dona Fraser as Director of the Children's Advertising Review Unit (CARU). Ms. Fraser is a privacy expert who previously worked for the Entertainment Software Rating Board (ESRB), a self-regulatory program developed by the video game industry.
- NAD has recommended that Benefit Cosmetics discontinue promoting the company's "they're Real! Mascara" with the advertising claims "#1 best-selling' Prestige Mascara in the U.S." and "#1 best-selling Prestige Mascara in the U.S. for 3 years."

Crowell & Moring's Retail & Consumer Products Law Observer

Each week, Crowell & Moring's Advertising & Product Risk Management Group brings you the top stories in retail and consumer products law.

Dueling Interests at CPSC and FDA "Deem" E-cigarette Battery Safety a Priority

Cheryl Falvey discusses competing authority in the regulation of e-cigarettes and other electronic nicotine delivery systems between the FDA and the CPSC, with specific concern for e-cigarette battery safety.

FTC Announces First Enforcement Action Against Social Media Influencers and Updates FAQs Rejecting Common Disclosure Practices

Following the FTC's first ever enforcement action against social media influencers, Lauren Aronson breaks down the rise in enforcement and the updated Endorsement Guides FAQs.

CPSC Targets Retailer Home Depot in Rare Sale of Recalled Goods Civil Penalty

Matthew Cohen writes about the CPSC's $5.7 million civil penalty against Home Depot to resolve allegations that the retailer knowingly sold and distributed recalled consumer goods.

Government Blocks Companies from Importing and Selling Children's Products after Alleged Non-Compliance with Product Safety Laws

Lauren Aronson discusses new NAD director Laura Brett's previous decisions regarding social media tastemakers and what her promotion means for the future of NAD.

CROWELL & MORING SPEAKS

Upcoming Engagements

Cyber Reputation Defense, October 10, 2017 - Webinar

On October 10, Cliff Zatz, Laura Aradi, Joe Meadows, and Chalana Williams will be presenting a webinar on the rise of internet defamation cases and defense against reputational attacks in the cyber-world. Click here for more information and to register.

Previous Engagements

On July 27, Preetha Chakrabarti and Anne Li presented a webinar hosted by the U.S. Fashion Industry Association titled "Printer Cartridges & Cheerleading Uniforms: What the Key 2017 IP Supreme Court Decisions Mean for Apparel Companies." Read more about this webinar here.

Turf Wars: Science vs Fear, A Field of Dreams or a Real Nightmare
On July 27, Cheri Falvey presented as part of a webinar on crumb rubber hosted by the Sports & Fitness Industry Association. Read more about this webinar here.

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[1] The FTC's long-standing MUSA compliance principles are incorporated into its 1997 Enforcement Policy Statement on U.S. Origin Claims (MUSA Statement) and its 1998 business guidance, Complying with the Made in USA Standard.
[2] MUSA Statement § V.
[3] See, for example, the Commando Lock closing letter, in which the FTC accepted the qualified claim "Made in USA with U.S. and global components" for a lock assembled in the United States, even though "the imported cylinders and keys [were] essential to the locks' function." (Dec. 13, 2016)
[4] MUSA Statement § IV.
[5] *Complying with the Made in USA Standard*, p.8.
[6] *Clark v. Citizens of Humanity, LLC*, 97 F. Supp. 3d 1199, 1206 (S.D. Cal. 2015) ("The Court concludes that § 17533.7 is not preempted by the FTC regulation because it is not impossible to comply with both laws, nor does § 17533.7 stand as an obstacle to accomplishing the FTC regulation's objectives.").
[7] Prior to the amendments, California's regulation of MUSA claims was markedly stricter than the FTC's, forbidding the use of the claim for products that had any amount of content made, manufactured, or produced outside of the United States.
[8] *See Clark*, 97 F. Supp. 3d at 1207-08.
[9] *Paz v. AG Adriano Goldschmeid, Inc.*, No. 14CV1372 DMS DHB, 2014 WL 5561024, at *6 (2014).
[10] California Business and Professions Code § 17533.7(b).
[11] California Business and Professions Code § 17533.7(c)(1).
[12] *Benson v. Kwikset Corp.*, 152 Cal.App.4th 1245, 1272 (2007) as modified on denial of reh'g (July 26, 2007) ("Thus, one would not violate the statute by making, manufacturing, or producing merchandise solely in the United States

even though using raw materials acquired from a foreign source.").

[13] https://www.whitehouse.gov/blog/2017/07/17/made-america; see also http://www.businessinsider.com/what-is-made-in-america-2017-7.

[14] See Federal Acquisition Regulation Subpart 25.101.

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