



The litigation companion to ACI's industry-leading forum on Advertising Law

American Conference Institute's Expert Forum on

Litigating & Resolving Advertising Disputes

Bringing and defending advertising challenges as competitive claims increasingly become part of the advertising arsenal

June 15-16, 2010 • The Helmsley Park Lane Hotel, New York, NY

Keynote Address:



Randal S. Milch
Executive Vice President and General Counsel
Verizon Communications

View from the Bench:

Hon. Timothy Batten
U.S. District Court
Northern District
of Georgia

Hon. Faith Hochberg
U.S. District Court
District of New Jersey

Hon. Warren W. Eginton
U.S. District Court
District of Connecticut

Featuring industry experts from:

- ABC
- Cadbury
- Coca Cola
- DIRECTV
- Fox
- Frito-Lay
- FTC
- National Advertising Division
- NBC
- Nokia
- Pactiv Corporation
- Pfizer
- S.C. Johnson & Son
- Sprint
- Subway
- T-Mobile
- Verizon

A Who's Who of the nation's advertising bar will share their expert strategies for bringing and defending false advertising allegations and help you:

- DETERMINE the strength of your position and whether to initiate a claim substantiation battle
- TAKE the most effective initial steps in a dispute and secure pivotal early relief
- DEVELOP a complete plan for success in a federal Lanham Act case
- SUCCEED in NAD proceedings by effectively advocating your claim
- ARGUE persuasively for monetary damages
- NAVIGATE the interplay between private proceedings and government regulatory actions
- BRING your challenge directly to the major television networks

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Companies that once were content to fight in grocery-store aisles and on television commercials are now choosing a different route – filing lawsuits and other formal grievances challenging their competitor’s claims (The New York Times, 11/22/09)

As companies respond to economic pressures by being more aggressive with their advertising, it has become vital for their counsel to be prepared for battle. We are now in a **new, more litigious environment**, as evidenced by the number of cases being brought before the National Advertising Division (NAD), in the federal courts under the Lanham Act, and by the stepped-up regulatory scrutiny at the FTC. In response, industry counsel **must be prepared both to bring, and to defend against**, complaints and legal actions relating to the making of false or misleading advertising claims. It is necessary to become equipped to expertly weigh the different available options and forums when a dispute arises, and be prepared to develop an effective strategy for **protecting a client’s brand** and high-stakes marketing campaigns.

ACI’s **Litigating and Resolving Advertising Disputes** conference will bring together industry leaders who will share with you their proven strategies and solutions for handling advertising disputes in **the courts, at the NAD, at the FTC** and directly with the **major television networks**. The program will feature an unprecedented in-house faculty including experts from **15 companies** on the front line of the current advertising debate including **Verizon, DirectTV, Frito-Lay, Coca Cola, S.C. Johnson, T-Mobile** and more. In addition, to provide a better understanding of what can turn a case your way in a federal Lanham Act proceeding, a special **judicial panel** will offer rare insights on how judges weigh key matters when presiding over advertising cases such as **requests for injunctive relief**. In another unique session, senior representatives from ABC and NBC will address their internal policies relating to advertising, and the **network procedures** for challenging particular advertisements.

You can add value to your attendance by taking advantage of our interactive workshop, the **Master Class on Defending and Challenging Consumer Surveys in a False Advertising Case**. At this hands-on high-level workshop, you will gain a deep understanding of how research and consumer perception surveys are utilized to provide support for a claim, to ensure that your arguments will withstand scrutiny.

This industry-leading event will provide you with the strategies, tactics, and insights that are critical to protecting your client’s brand. Don’t delay – register now by calling **1-888-224-2480**, faxing your registration form to **1-877-927-1563**, or registering online at www.AmericanConference.com/advertisingdisputes

Who You Will Meet

- ✓ **Counsel from brand companies, including:**
 - Marketing Counsel
 - Advertising Counsel
 - General Counsel
 - Litigation Counsel
 - Regulatory Counsel
 - Corporate Counsel
- ✓ **Outside counsel specializing in:**
 - False advertising litigation
 - FTC investigations
 - NAD hearings
 - Advertising substantiation and surveys

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For more information about this program or our global portfolio of events, please contact:

Wendy Tyler

Head of Sales

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Meet Our Distinguished Faculty

Jay Barnes

Assistant General Counsel
Pactiv Corporation

Hon. Timothy Batten

U.S. District Court
Northern District of Georgia

Darren Bowie

Legal Director
North America Nokia

Laura Buckland

Chief Litigation Counsel
T-Mobile

Lewis R. Clayton

Partner
Paul, Weiss, Rifkind
Wharton & Garrison LLP

Roger A. Colaizzi

Partner
Venable LLP

Elaine Divelbliss

Counsel, Litigation
Sprint Prepaid Group

Lesley Fair

Senior Attorney
Federal Trade Commission

Kathryn Farrara

Staff Attorney
National Advertising Division

Jeffrey A. Fiarman

Executive Vice President and General
Counsel
Weight Watchers International, Inc.

Edward F. Glynn

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Venable LLP

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Jeffrey A. Greenbaum

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Frankfurt Kurnit Klein & Selz PC

Christine Haas

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Thomas M. Hughes

Partner
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Dr. Bruce Isaacson

President
MMR Strategy Group

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Davis & Gilbert LLP

Bob Klein

President
Applied Marketing Science, Inc.

Beth Kotran

VP, Assistant General Counsel
Cadbury North America

Ruth Lebed-Rofes

Corporate Counsel
S.C. Johnson & Son

Bruce S. Meyer

Partner
Weil, Gotshal & Manges LLP

Randal S. Milch

Executive Vice President
and General Counsel
Verizon Communications

Tom M. Monagan III

Partner
Kirkland & Ellis LLP

Thomas C. Morrison

Partner
Manatt, Phelps & Phillips LLP

David M. Moss

Assistant General Counsel
Consumer Health, Pfizer

Lynn K. Neuner

Partner
Simpson Thacher & Bartlett LLP

Katherine Nordberg

Vice President
FBC Legal Affairs
Fox Broadcasting

Jeanne O'Neill

Marketing Counsel
Frito-Lay

Chris Roblyer

Senior Managing Counsel,
Strategic Marketing
Coca-Cola North America

Jennifer Santos

Vice President, Ad Standards
NBC

Mary Jane Saunders

General Counsel
Subway Franchisee Advertising Fund Trust

Chrysse Spathas

Director
Commercial Standards
ABC

Ted Suzuki

Associate General Counsel
DIRECTV

Steven Tugentman

SVP & Deputy General Counsel
Verizon Communications

Rebecca Tushnet

Professor
Georgetown Law School

John E. Villafranco

Partner
Kelley Drye & Warren LLP

Lawrence Weinstein

Partner
Proskauer Rose LLP

Tuesday, June 15, 2010

8:15 **Registration and Welcoming Breakfast**
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9:00 **Co-Chairs' Opening Remarks**

Laura Buckland
Chief Litigation Counsel
T-Mobile

Lynn K. Neuner
Partner
Simpson Thacher & Bartlett LLP

9:15 **Keynote Address:**

Randal S. Milch
Executive Vice President and General Counsel
Verizon Communications

9:30 **Overcoming the Challenges Faced by In-House Counsel when Advertising in an Era of High Risk**

Ruth Lebed-Rofes
Corporate Counsel
S.C. Johnson & Son

Chris Roblyer
Senior Managing Counsel
Strategic Marketing
Coca-Cola North America

Ted Suzuki
Associate General Counsel
DIRECTV

Katherine Nordberg
Vice President
FBC Legal Affairs
Fox Broadcasting

David M. Moss
Assistant General Counsel, Consumer Health
Pfizer

Dr. Bruce Isaacson
President
MMR Strategy Group

- Analyzing what ads are triggering the most intensive scrutiny
- Understanding the views and concerns held by in-house counsel relating to advertising challenges
- Factoring in the economic injury caused by competitor advertisements
- Projecting potential costs and revenue at risk if an advertising campaign is withdrawn
- Making an early assessment of the strength of your position
- Assessing potential risks in initiating a claim substantiation battle
- Identifying goals and potential available remedies

- Weighing and comparing anticipated costs of different courses of action
 - considering the demands upon resources if litigation is pursued
- Determining when it makes sense to ignore the competitor
- Navigating public relations considerations relating to bringing or defending advertising claims
- Controlling litigation risks with effective claim substantiation policies
 - crafting practical standards for your claims
 - 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

10:45 **Morning Coffee Break**

11:00 **Determining the Appropriate Forum for Challenging Your Competitors' Ads**

Jeanne O'Neill
Marketing Counsel
Frito-Lay

Steven Tugentman
SVP & Deputy General Counsel
Verizon Communications

Tom M. Monagan III
Partner
Kirkland & Ellis LLP

- Exploring options for resolving disputes short of legal action
 - utilizing relationships with competitors
 - drafting a cease and desist letter
 - employing public relations initiatives
- Determining whether to complain to regulators
 - pros and cons of bringing a matter to the FTC, or other federal or state regulators
 - constructing a compelling case against your competitor
 - assessing the likelihood that federal or state regulators will take action
- Working with the television networks to have a campaign removed
- Understanding the pros and cons of initiating a proceeding before the NAD
 - estimating the timelines
 - determining what you can expect to achieve
 - knowing what you need to support your case
 - considering how the courts view the NAD
- Evaluating whether to bring a Lanham Act false advertising case in federal court
 - comparing substantive and procedural differences in federal court vs. NAD
 - availability of types of potential relief
 - costs and risks
 - potential for successive consumer fraud class actions

12:00 **Networking Luncheon**

1:15 **The Realities of Bringing and Defending a Lanham Act Case in Federal Court Part 1: Preparing an Effective Strategy**

Laura Buckland
Chief Litigation Counsel
T-Mobile

Lawrence Weinstein
Partner
Proskauer Rose LLP

Rebecca Tushnet
Professor
Georgetown Law School

For Plaintiff:

- Determining the key elements for putting together a winning case under Section 43(a)
 - assessing what scientific and/or statistical issues are relevant
 - assembling the proper team for effective litigation
- Evaluating the strengths and weaknesses of your position and making that part of your strategy
- Selecting the most appropriate or receptive venue
- Tailoring your position to what arguments are likely to be most effective
 - knowing what complex marketing and scientific principles will be most understandable to the court
- Assessing the likelihood of proving that a competitor's claim is literally false

For Defense:

- Scrutinizing your internal review process and support of the advertising in question
- Assessing the potential scope and impact of the claim
- Anticipating how the plaintiff will proceed and weighing potential defense tactics

2:15 **The Realities of Bringing and Defending a Lanham Act Case in Federal Court Part 2: Litigating and Proving the Case**

Lewis R. Clayton
Partner
Paul, Weiss, Rifkind, Wharton & Garrison LLP

Thomas C. Morrison
Partner
Manatt, Phelps & Phillips LLP

Bob L. Klein
President
Applied Marketing Science, Inc.

For Plaintiff:

- Pursuing effective and rapid discovery
 - techniques for minimizing the burden on counsel
- Seeking a preliminary injunction in a false advertising case
 - effect of eBay on obtaining preliminary and injunctive relief
- Determining whether to proceed if injunctive relief is denied
- Demonstrating actual or likely damages

- connecting the competitor's advertisement to lost sales or profits
- enhanced damages and attorney's fees
- Meeting the burden of proving that a challenged claim has false or misleading implications
 - understanding the applicable standards of proof
 - identifying and presenting necessary data or proof for attacking the claim
 - constructing surveys that properly address the relevant issues
 - optimizing use of surveys as evidence
 - making effective use of experts
- Demonstrating materiality of the deception within the context of your strategy for seeking damages
- Challenging claims in the disputed advertisement that refer to studies or proof
 - defining the parameters of an appropriate test and investigating whether data was omitted
- Effectively arguing for powerful relief from the court
 - banning of the challenged advertisement
 - requiring corrective advertising
 - mandating product recalls
 - securing lost profits

For Defense:

- Identifying weaknesses in the plaintiff's case and defending the false advertising claim
 - scrutinizing use of surveys
 - challenging experts
 - countering arguments relating to lost sales or profits
- Making effective use of counterclaims
- Seeking appellate review of trial court determinations

3:15 **Afternoon Refreshment Break**

3:30 **View from the Bench: Judicial Perspectives on Advertising Litigation**

Hon. Timothy Batten
U.S. District Court
Northern District of Georgia

Hon. Faith Hochberg
U.S. District Court
District of New Jersey

Hon. Warren W. Eginton
U.S. District Court
District of Connecticut

Leading jurists will give you a rare insider look at the evidence and arguments that can turn cases one way or the other in Federal Lanham Act proceeding. Special attention will be paid to how the courts view regulatory activities including FTC actions and NAD determinations. Other important issues to be addressed include how they analyze requests for injunctive relief and monetary damages claims.

4:30 **Cocktail Reception**
Hosted by

manatt

Wednesday, June 16, 2010

8:00 **Continental Breakfast**

9:00 **Keynote Address**

Jeffrey A. Fiarman

Executive Vice President and General Counsel
Weight Watchers International, Inc.

9:15 **Inside Strategies for Effectively Utilizing the NAD to Resolve Advertising Disputes**

Jay Barnes

Assistant General Counsel
Pactiv Corporation

Beth Kotran

VP, Assistant General Counsel
Cadbury North America

Kathryn Farrara

Staff Attorney
National Advertising Division

Jeffrey A. Greenbaum

Partner
Frankfurt Kurnit Klein & Selz PC

Bringing a dispute to the National Advertising Division (NAD) can be a less costly way to achieve your desired results. To succeed in this venue, however, practitioners must have an expert understanding of the distinct nuances of NAD proceedings. In this session, experienced NAD practitioners will share their insider techniques for effective advocacy. They will provide guidance on:

- Solidly establishing your claim's foundations
- Assessing what type of substantiation NAD will want
- Ensuring that your substantiation is a good fit for your claim
- Anticipating how much precedential value the NAD will give to prior decisions
- Navigating the appeals process

10:30 **Morning Coffee Break**

10:45 **Special Focus Session: Taking the Most Effective Initial Action and Securing Preliminary Relief in a False Advertising Case**

Elaine Divelblis

Counsel, Litigation
Sprint Prepaid Group

John E. Villafranco

Partner
Kelley Drye & Warren LLP

Success in an advertising case often turns on securing a speedy initial result. For instance by obtaining preliminary relief, including the removal of the challenged advertisement from the marketplace, a company is able to protect itself competitively and also strengthen its position in the ongoing proceeding. This session will provide expert guidance on how to use the most effective early litigation strategies.

- Employing aggressive early motion strategies to move the case forward rapidly
- Operating effectively in a compressed time period
- Making your strongest argument for a preliminary injunction
- Commissioning a bulletproof consumer perception survey to support your request for relief
- Expediting a NAD proceeding
- Anticipating potential defenses and proactively developing strategies for overcoming them

11:30 **Effectively Navigating the Interplay between Government Regulatory Activity and Private Advertising Litigation**

Lesley Fair

Senior Attorney
Federal Trade Commission

Darren Bowie

Legal Director, North America
Nokia

Edward F. Glynn

Partner
Venable, LLP

- Assessing how the more activist stance of the Obama Administration impacts on advertisers
- Taking a hard look at recent actions by the FTC
- Identifying the purpose and meaning of FTC letters and requests
 - informal letters from the FTC staff
 - formal CIDs and subpoenas
 - ex parte TROs and asset freezes
- How courts weigh charges brought by the FTC
- Uncovering the potential impact of trends in state AG actions
 - navigating state deceptive trade practice and false advertising statutes
- Meeting challenges raised by parallel proceedings
 - concurrent state and federal actions
 - private suits and class actions
 - NAD proceedings

12:30 **Networking Luncheon**

1:45 **Making an Effective Case Directly to the TV Networks**

Jennifer Santos

Vice President, Ad Standards
NBC

Chrysse Spathas

Director – Commercial Standards
ABC

Mary Jane Saunders

General Counsel
Subway Franchisee Advertising Fund Trust

Lynn K. Neuner

Partner
Simpson Thacher & Bartlett LLP

- Determining when to file challenges with the major networks
- Navigating their internal processes

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- Understanding how they apply their standards in practice
- Identifying practical considerations and potential time frames
- Anticipating the challenges for counsel
- Drafting your response when a competitor goes to the networks about your ad

2:45 **Afternoon Refreshment Break**

3:00 **“Pushing the Envelope”—Case Studies Examining Advertising that has been the Focus of Recent Adversarial Proceedings**

Christine Haas

Editor
Broadcast Standards and Practices
ABC Inc.

Linda Goldstein

Partner
Manatt Phelps & Phillips LLP

This session will examine several advertisements (television, internet, and print) that were the subject of adversarial proceedings during the past year to identify the elements that caused the challenger to file the action and extract the potential legal lessons for brand attorneys and litigators.

- What was the challenger’s problem?
- What was it about this particular ad that caused the dispute to escalate?
- What type of evidence was presented during the proceedings?
- Who won and why?
- Identifying hot button issues and takeaways
 - use of testimonials and endorsements
 - concerns relating to “green” claims in advertisements
 - potential strategies for better controlling risks when mounting aggressive campaigns

3:45 **Employing Effective Settlement Strategies**

Roger A. Colaizzi

Partner
Venable LLP

Thomas M. Hughes

Partner
Hunton & Williams LLP

Neal H. Klausner

Partner
Davis & Gilbert LLP

- Determining when to pull the plug following lack of success in the initial pleadings
- Ensuring effective coordination of settlement efforts between in-house and outside counsel
- Utilizing emergency defense procedural tactics to facilitate settlement of the case
- Factoring concurrent proceedings into settlement strategies
- Strategies for effectively deterring multi-state AG matters and class actions
- Identifying and negotiating key provisions in settlement agreements

4:45 **Conference Adjourns**

Thursday, June 17, 2010
9:00 a.m. – 12:00 p.m. (Registration at 8:30)

POST-CONFERENCE MASTER CLASS
Defending and Challenging Consumer Surveys
in the Context of a False Advertising Case

Bruce S. Meyer

Partner
Weil, Gotshal & Manges LLP

For Plaintiff

- Designing research and consumer perception surveys that can withstand attack
 - choosing a viable, useful, and unbiased sampling methodology
 - employing best practices for developing questionnaires and coding and analyzing data
 - choosing the best control
 - learning from mistakes made where surveys have not stood up to close scrutiny
- Interpreting the responses in the survey in a bullet-proof manner to support your case
- Choosing the right survey expert(s) for the case who will withstand aggressive defense tactics
- Ensuring the internal survey is not used by the opposition as evidence

For Defense:

- questioning the methods and protocol of the survey
- attacking the survey as flawed based on biased, leading or ambiguous questions
- undermining the expert’s approach, including his or her choice of control
- introducing differing potential interpretations to the responses in the survey to cast doubt on the argument

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Post-Conference Master Class June 17, 2010
Defending and Challenging Consumer Surveys
in the Context of a False Advertising Case

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Reservations: 212-521-6640

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