

The 17th National

ADVANCED CORPORATE COUNSEL FORUM ON

ADVERTISING LAW

See back cover for
special discount information!

Maximizing brand exposure & revenue while avoiding scrutiny & conflict

Get practical insights from
these leading advertisers, agencies
and industry players:

AOL
The Coca-Cola Company
Nickelodeon Networks
FTI Consulting
Motorola
Starcom
AU-DAN Entertainment
McDonald's
Sony Pictures Entertainment
General Mills
Judith Finell Music Services
Massive Incorporated

Hear from the regulators themselves!
Get updates and advice from:

Federal Trade Commission
National Advertising Division
CARU

June 21 & June 22, 2006
Swissôtel, Chicago, IL

In-house counsel, regulators and private practice advertising attorneys will provide you with up to date, practical advice on how to:

- DISTINGUISH between real and puffery when substantiating claims
- PREDICT the types of ads that the regulators will target
- PREVAIL in advertising claims litigation
- EVALUATE recent trends in advertising and promotions law
- NEGOTIATE multi-faceted deals with sponsorship, endorsement, and co-branding components
- MAXIMIZE profits when structuring brand integration deals
- NEGOTIATE talent agreements in compliance with union requirements
- COMPLY with "fair use" requirements when using others' intellectual property in your ads



PLUS, DON'T MISS

Workshop A – June 20, 2006

Workshop B – June 23, 2006

Shaping the Future for the Advertising
World — Must Enter to Win

Master Class on Fair Use in Copyrights
Trademarks & Right of Publicity

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WHO SHOULD ATTEND

Best in its class...Not all rules apply... Results not typical...Children, ask your parents...

The above phrases have a lasting, meaningful effect on advertisers, marketers and consumers, but they can cause significant detriment to your company in a variety of ways if you don't use them properly. Knowing how and when to cover your bases is the foundation for any successful campaign, whether it is promoting a product, integrating brands, or signing talent. The advertising industry faces elevated scrutiny from all angles, which makes it imperative for you to be up to date, not only on the latest case law and legislative developments, but on the actual types of advertisements that are targeted by the FTC, the NAD or the Attorney General's Office.

American Conference Institute's 17th National Advanced Corporate Counsel Forum on Advertising Law has been revamped and redesigned to do bring you the most recent information from premier attorneys in the industry, and the regulators who can tell you how to implement the best practices to achieve compliant (and effective) ads. Once again, this advanced, highly practical conference brings together a preeminent faculty of industry players who will provide you with their expert strategies on:

- Distinguishing between puffery and reality when substantiating claims
- Identifying types of ads that the regulators will target
- Litigating advertising claims — allocating damages, working with experts, and using the *Lanham Act* to police competitors' claims
- Analyzing recent trends in sweepstakes and promotions law
- Incorporating endorsements, co-branding and sponsorships into one deal
- Structuring brand integration deals in the context of working with advertisers, agencies and consultants
- Negotiating talent agreements in compliance with union requirements
- Complying with "fair use" law when using others' copyrights and trademarks

You can also add value to your attendance by taking advantage of our interactive workshops. The pre-conference workshop, **Shaping the Future for the Advertising World — Must Enter to Win**, will be an informational, networking forum for new advertising law partners and in-house counsel. Expert advertising attorneys will discuss how to bring your basic claim substantiation knowledge to the next level and offer strategies for prevailing in NAD proceedings. The post-conference workshop, **Master Class on Fair Use in Copyrights Trademarks & Right of Publicity**, brings forth a fresh, in-depth perspective on fair use in copyright, trademark and the right of publicity.

Take this unique opportunity to get the answers to your advertising questions from some of the largest advertisers and advertising agencies nationwide including **The Coca-Cola Company, Starcom, Sony Pictures Entertainment, General Mills, AOL, McDonald's and Nickelodeon**. You will also hear first-hand information from the **FTC, NAD, and CARU**, and you will have the opportunity to network with your peers and colleagues from around the country.

Whether you've attended in the past or it's your first time, don't miss this comprehensive and information-packed event. Register now to ensure your place by calling (888) 224-2480, faxing your registration form to 877-927-1563 or registering online at www.americanconference.com/adlaw.

- In-house counsel in any company involved in advertising or marketing its products or services
- Attorneys who specialize in the following practice areas:
 - Advertising
 - Marketing
 - Promotions
 - Entertainment/media
 - Consumer protection
 - E-commerce/Internet
 - Trademarks
 - Privacy
 - IP
 - Licensing
- Marketing and advertising directors

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Accreditation will be sought in those jurisdictions requested by registrants which have continuing legal education requirements. To request credit, please check the appropriate box on the Registration Form.



ACI certifies that this activity has been approved for CLE credit by the State Bar of California in the amount of 15.0 hours. An additional 3.0 hours will apply to each workshop participation (A or B).

ACI certifies that this activity has been approved for CLE credit by the New York State Continuing Legal Education Board in the amount of 18.0 hours. An additional 3.5 hours will apply to each workshop participation (A or B).

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ACI works closely with each sponsor to create a distinctive package tailored to individual marketing and business development objectives. Our objective with every sponsor is to foster a rewarding and long-term partnership through the delivery of a wide variety of sponsorship benefits and thought leadership opportunities. For more information, please contact:

Benjamin Greenzweig,
Director of Business Development, U.S.
(212) 352-3220 ext. 238 or
B.Greenzweig@AmericanConference.com

Pre-Conference Workshop for New Advertising Attorneys and Business Executives

Tuesday, June 20, 2006

A

2:00 p.m. — 5:00 p.m.

Shaping the Future for the Advertising World — Must Enter to Win

Liisa Thomas

Partner

Winston & Strawn (Chicago, IL)

Whether you are new to advertising and marketing law, or you have been practicing for a few years, now is the time to get the tools you need to understand advertising law. In this session you'll get an understanding of the basic principles and foundations underlying the laws and regulations that will affect your practice. Join your colleagues and peers and benefit from this practical, interactive workshop on substantiating claims, succeeding before the NAD, and privacy, including e-mail and CAN-SPAM. Through a series of hypotheticals, mock advertisements and negotiations, you will have the opportunity to collaborate with fellow attendees and solve common problems that even the most seasoned advertising attorneys face.

Workshop Highlights

- Substantiating claims and getting your ads on the air
 - FTC and broadcast network requirements
- Trademark basics for advertisers
 - appropriate brand name usage
 - clearing slogans
- Direct-to-consumer communications
 - E-mail/CAN-SPAM update
 - sending fax ads
 - online disclosures when collecting information
- Promotions and sweepstakes law basics
- Identifying common privacy issues

Wednesday, June 21, 2006

7:15 Registration and Continental Breakfast ☕

8:00 Co-Chairs' Opening Remarks

Lewis Rose

Member

Collier Shannon Scott, PLLC (Washington, DC)

Jill Samuels

Assistant General Counsel

AOL (Dulles, VA)

8:15 **Keeping it Real – Avoiding Puffery When Substantiating Claims**

Rick Kurnit

Partner

Frankfurt, Kurnit, Klein & Sels (New York, NY)

Distinguishing between real and puffery is perhaps the most difficult challenge when substantiating claims. If your client intends to rely on humor to support a potential claim, not only will you be expected to show a foundation for the humor, but you must be prepared to explain why people will find it funny. Rick Kurnit will show you how to anticipate when a claim will be communicated, and present ads that weighed in on both sides of the humor scale.

- Determining whether there are claims requiring substantiation
- Establishing a process for review
- Getting the creatives to tell you what they intend to do
- Relying on humor to avoid making a claim
- The importance of production values and executional choices
- Case studies where humor has succeeded and where it has failed

9:00 **Identifying Ads that Contradict Regulatory Schemes and Avoiding Common Claim Substantiation Pitfalls**

Lewis Rose

Member

Collier Shannon Scott, PLLC (Washington, DC)

Lesley Fair

Senior Attorney, Division of Advertising Practices
Federal Trade Commission (Washington, DC)

David Mallen

Assistant Director

National Advertising Division (New York, NY)

Each of the ads in this multimedia presentation were challenged by either the FTC or the NAD. Lew Rose will analyze each ad and tell you how to recognize the red flags the regulators are after so you don't make the same mistakes. He will then moderate a panel of regulatory attorneys who will discuss recent enforcement trends and what to expect in the near future.

10:15 Coffee Break hosted by ☕



10:30 **Litigating Advertising Claims — Results May Vary**

David R. Wright

Partner

Workman Nydegger (Salt Lake City, UT)

Lance E. Gunderson
Senior Managing Director
FTI Consulting (Houston, TX)

John Villafranco
Member
Collier Shannon Scott, PLLC (Washington, DC)

- Using the *Lanham Act* to police competitors' claims
 - How to determine if an ad is deceptive
 - How to recognize a biased survey
 - Proving a causal nexus between injury and false advertising
- Allocating damages — what percentage of profits are attributable to the ad?
 - Actual consequential damages
 - Disgorgement of profits
- Filing a complaint
 - Timeline and common challenges. When and when not to move for a preliminary injunction
 - Strategically using evidence and survey conclusions to prove falsity
- Working with expert witnesses
 - scientific
 - consumer
 - economic/valuation
- Recent trends and successful cases
- The growth of the necessary implication doctrine

11:15 Playing the Sweepstakes and Promotions Game Without Taking a Gamble — No Purchase Necessary

Linda Goldstein
Partner
Manatt, Phelps & Phillips, LLP (New York, NY)

- Analyzing recent cases and decisions to determine how they will affect your next sweepstakes or promotion
- How the FTC regulates sweepstakes
 - update on FTC privacy laws
- Drafting titles, rules, and restrictions
- Making sure you have enough space to include the "supers"
- Working with your creative team to paint a "legal" picture on your sweepstakes or promotion materials
- Identifying new developments in rebates and gift cards
 - escheat rules
 - building revenue for the states — just how much goes unclaimed?

12:15 Networking Luncheon for Speakers & Delegates



1:45 The Changing Nature of Sponsorships — A Sophisticated Look at How Marketers are Leveraging Their Investments in the World of Sports and Entertainment

Lisa Rovinsky
Partner
Manatt, Phelps & Phillips, LLP (New York, NY)

Jeffrey B. Gewirtz
Counsel – Sports Transactions & Marketing
The Coca-Cola Company (Atlanta, GA)

As quickly as the media landscape continues to fragment, consumers "tune out" or "fast-forward" traditional advertising messages, which challenges marketers to develop new and innovative ways to reach and connect with their consumers. One marketing lever that has garnered a renewed interest from brand marketers is the 'wide world' of sports and entertainment sponsorships. Given the high potential of these sponsorships, the first question for marketers continues to be: will a sponsorship provide more return on investment over other marketing options? If yes, then the focus moves to choosing the "right" property that supports the brand DNA and creates the desired consumer impact. Yet simply placing a logo on a car or securing a title sponsorship of an event is not enough anymore. Leading edge marketers must ensure that they innovate and address all ways to extend and leverage their property investments, to ensure optimal consumer impact and maximum return on investment. Our experts will share insight into how these leading edge marketers negotiate these multifaceted sponsorship deals.

- Selecting the "right" sponsorship
- Conducting marketing due diligence
- Working with your business people to get deals done quicker
- Negotiating tactics that will ensure the best deal for your client
- Managing the negotiation and execution of high-stakes deals, while meeting the demands of high-profile clients
 - creative fee structures
 - product category exclusivity
 - scope of rights
 - ambush marketing protection
 - work stoppages
- Interplay play between sponsorship, endorsements and co-branding rights
 - behind the scenes look at how companies are "melding" all these marketing rights into one sponsorship package
- Potential conflicts between sports league/team sponsorships and player endorsements
- Negotiating a players' association group license

3:00 Refreshment Break

3:15

Imperative Regulatory & IP Issues You Cannot Avoid When Structuring Brand Integration Deals

Jeffrey Greenbaum

Partner

Frankfurt, Kurnit, Klein & Sels (New York, NY)

Barry L. Powell

Senior Vice President, General Counsel

Starcom MediaVest Group, Inc. (Chicago, IL)

- Anticipating commercial misappropriation claims
- Common “advertainment”-induced legal issues that fall between the cracks
 - working mentions of the product into the script
- Intellectual property concerns arising from the integration of marketing and entertainment
 - limits on using others’ trademarks and copyrighted material, arising from the integration of marketing and entertainment
- FTC regulation of branded content — what to be ready for
- Making the right disclosures in branded entertainment deals
 - product placements
 - endorsers
 - buzz marketing

4:15

Wait! There's More! Negotiating Competitive Structures for Brand Integration Deals in Film, Television, Video Games and Wireless Phones

Moderator:

James D. Taylor

Partner

Loeb & Loeb LLP (New York, NY)

Eric Baum

Associate General Counsel

Sony Pictures Entertainment (Los Angeles, CA)

Jordan Yospe

President

AU-DAN Entertainment (Los Angeles, CA)

David C. Carroll

Senior Counsel, Marketing & Advertising

Motorola, Inc. (Libertyville, IL)

Nicholas Longano

Chief Marketing Officer

Massive Incorporated (New York, NY)

In recent years, the advertising industry has been wrought with brand integration in every possible medium. Ads are popping up wherever people are likely to see them, are less subliminal than ever, and they can be as large as a movie screen or as small as your cell phone window. Jim Taylor will discuss structuring competitive brand integration deals in the context of working with advertisers, advertising agencies, and consultants. He will also host a roundtable discussion, in which in-house attorneys from the film, television, video game, and wireless phone industries will share their experiences and strategies for negotiating brand integration deals in these widely recognized mediums.

- How deals are structured between advertiser and producer
- Negotiating future revenue streams and rights
- Structuring service and fee agreements with agency and consultants on your brand integration deal
- Addressing advertisers' ownership and control issues

5:30

Conference Adjourns

Thursday, June 22, 2006

8:00

Co-Chairs' Opening Remarks

8:15

Challenges to Expect When Your Advertising Crosses Borders

Advertising in Canada

Wendy Reed

Partner

Heenan Blaikie LLP (Toronto, CA)

Ash Mishra

Legal Counsel

General Mills, Inc. (Minneapolis, MN)

- Best practices in comparative advertising
 - service marks
 - differences in copyright laws
 - ways to circumvent the lack of a parody defense
 - Advertising Standards Canada (ASC) v. NAD – comparative analysis
- Fulfilling privacy requirements
 - online privacy
 - viral marketing
 - Canadian Marketing Association rules for teens
- Advertising and marketing food and dietary products
 - nutrition labeling
 - nutrient and health claim rules
- Complying with French language laws
- Advertising to children
- Analyzing differences in promotion law
 - skill contests
 - Quebec registration
- Case studies and examples of indecency, sex, and violence

Recent Developments in Advertising & Marketing in the UK & EU

Stephen Groom

Partner

Osborne Clarke (London, UK)

Armed with the results of a unique Pan European probe into digital marketing law enforcement, Stephen Groom of Osborne Clarke, London, reports from the edge on the dynamics of today's European ad law landscape. Topics covered will include:

- Anticipating the Office of Communications plans for branded content regulation

- Predicting the future for Pan European marketers
 - the new EU approach to rules for audiovisual services
- Ambush marketing — the UK's rules on "trading off"
 - London 2012
- EU Unfair Commercial Practices Directive — the pain and the gain
- EU data protection: new approaches to compliant data export
- Europe's "Do not market" preference scheme — harmony or shambles?
- Interactive marketing — is Europe's opt in regime working?

9:45 Negotiating Talent Agreements, Working With Unions, and Managing Talent

Brian Heidelberger
Partner, Winston & Strawn (Chicago, IL)

Benjamin R. Mulcahy
Partner, Sheppard, Mullin, Richter & Hampton, LLP (New York, NY)

Eric Carlson
Counsel, Marketing/Intellectual Property
McDonald's Corporation (Oakbrook, IL)

Delia Gray
Associate Director Broadcast Affairs
E. Morris Communications Inc. (Chicago, IL)

- Distinguishing between the unions
- Anticipating the union's involvement in talent contracts
 - union audits of signatories
- What to expect with the new SAG contract
 - pension benefits
 - health benefits
 - strike issues
- Identifying the lawyer's role in negotiating the business terms of a talent or endorsement agreement
- Making sure you know who really represents the artist you want to sign
- Structuring special clauses to deal with "divas" and other difficult clients
- Finding common ground on common drafting problems
- Must be 18 to enter: Negotiating contracts with children's representatives and special issues to flag

11:00 Coffee Break ☕

11:15 The Ads Are On... Do You Know Where Your Children Are? Advertising and Marketing to Children

Liisa Thomas
Partner
Winston & Strawn (Chicago, IL)

Elizabeth Lascoutx
Vice President and Director
Children's Advertising Review Unit (New York, NY)

- Guidelines for advertising to children
 - CARU Guidelines — The Seven General Principles

- Network guideline considerations
- Collecting information from children online
 - complying with COPPA
 - CARU and FTC actions
- Special problems for general interest websites
 - when to be worried
 - when you're in violation

12:00 Putting the Food On the Table Without Getting Burned – A Close Look at Food Ads that Target Children

Joseph Lewczak
Partner
Davis & Gilbert LLP (New York, NY)

Antonious Porch
Vice President & Senior Counsel
Business & Legal Affairs, Online and New Media Businesses

Nickelodeon Networks (New York, NY)

- Advertising food products to children — an overview
- How recent litigation and threats of litigation will affect getting your food product noticed
- Reviewing and approving food ads that are targeted to children
- How Congress and state legislatures are dealing with the issue; pros and cons
- How the FTC and the FCC are addressing concerns about advertising certain food products to children

12:45 Networking Luncheon for Speakers & Delegates

2:00 Getting the Green Light to Use Music in Your Advertising

Brian Murphy
Partner
Frankfurt, Kurnit, Klein & Selz (New York, NY)

Judith Finell
Musicologist
Judith Finell MusicServices, Inc. (Scarsdale, NY)

- Licensing pop music to make your ad memorable
- Knowing when you need the artist's consent, and what happens if you don't get it?
 - complying with SAG rules
 - the law on consent
- Creating and using rip-o-matics and temp tracks
- Deciphering what your clients really want and need to promote their products
- Identifying originals — how far back should you go?
- Avoiding voice misappropriation claims
- Implications of the Lanham Act
- Using artists' "signature" songs
- Strategies for minimizing legal risk in using music
- Avoiding vulnerability while creating and producing music

3:15 Refreshment Break

3:30 Fair Use: Void Where Prohibited by Law

Fair Use of Trademarks

Mary Innis

Partner, Loeb & Loeb LLP (Chicago, IL)

- Implementing the fair use defense in trademark infringement suits
 - applying the *K.P Permanent Make-Up, Inc.* test into your fair use analysis
 - confusion test — *Polaroid* factors and the Second Circuit balancing test
 - nominative fair use
- Using competitors' trademarks and logos without being subject to a fair use claim
- Determining who is responsible for obtaining trademark clearance
- Case studies

Fair Use of Copyrights

Michael D. Hauser

Partner

Alston & Bird (Atlanta, GA)

- Determining whether the work is copyrighted or in the public domain
- Determining whether a particular use is fair use under the Copyright Act
- Finding originals to determine who owns the copyright
- Borrowing text from other sources
- Photographs and the interplay with the right of publicity
- Update on parody law
- The difference between fair use and de minimis use
- Case studies

Are You Suffering or Profiting From Web-Illusions?

Ronald R. Urbach

Partner, Davis & Gilbert LLP (New York, NY)

The illusion of blogs, websites or actual ads that "appear" to belong to an advertiser brings about the need to employ manpower and use financial resources to guard against these unsanctioned activities. At the same time, advertisers themselves may launch blogs and web-based campaigns where their corporate identity is intentionally either well-concealed or not disclosed at all. This session examines the fair use, commercial speech, third party rights, personal names, and disclosure issues that arise and have yet to be tested in the context of this type of marketing.

5:45 Conference Concludes

Post-Conference Workshop

Friday, June 23, 2006

9:00 a.m. – 12:00 p.m.



Master Class on Fair Use in Copyrights Trademarks & Right of Publicity

Michael D. Hauser

Partner, Alston & Bird LLP
(Atlanta, GA)

David J. Stewart

Partner, Alston & Bird LLP
(Atlanta, GA)

Jennifer B. Moore

Partner, Alston & Bird
(Atlanta, GA)

Drawing the line between fair and unfair use is one of the most challenging issues in advertising. This Master Class will provide you with in-depth knowledge on copyright, trademarks and the right of publicity. In an open forum discussion, where questions and comments will be encouraged, three top level attorneys from Alston & Bird will bring you up to date on these following issues:

Copyright

- Analyzing whether a use is an infringement
- Fair use v. de minimis use
- Using others' copyrighted material
 - Using music and video clips at trade shows and meetings of company sales forces

Trademarks

- *Sleekcraft* or *New Kids*: Which legal standards apply?
- Determining whether a confusing use can be a fair use
- Case studies of use in comparative advertising
- Including third party marks and trade dress in non-comparative ads
- Identifying special issues with dealers and distributor ads
- Implementing certification marks and references to awards
 - third-party reviews
- Parody and Satire: When parody is a defense and when it is not
- Electronic use of third-party marks: meta tags, search engine keywords, pop-up triggers
- Best practices

Right of Publicity

- Determining when you can use an individual's name or image in advertising
- Celebrity/non-celebrity issues
- Crowd scenes and background appearance
- Images of public settings
- Use of likenesses: The Vanna White case and its progeny
- Rights of publicity in music and other vocal imitation issues
- Using names and images in books and artwork
- Parody/Satire
- Best practices

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Workshop B – June 23, 2006: Master Class on Fair Use in Copyrights Trademarks & Right of Publicity

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