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## Advertising Alert

January 26, 2012

### Advertising News & Analysis - January 26, 2012

News

#### FTC SETTLES WITH “FAKE NEWS” ACAI AFFILIATE MARKETERS

On Wednesday, six online marketers agreed to settlements with the Federal Trade Commission (“FTC”) that will permanently halt their allegedly deceptive practice of using fake news websites to market acai berry supplements and other weight-loss products.

Last summer, the FTC successfully halted the operation of sites operated by the six marketers. The FTC alleged that websites were designed to look like legitimate news reports, but were in truth commercial advertisements intended to drive consumer purchases of Acai berry-based weight-loss products. The websites often purported that the story related by the “reporter” had run on or in major media outlets such as ABC, Fox News, CBS, CNN, *USA Today*, and *Consumer Reports*.

Acai berry supplements are derived from the berries of acai palm trees, which are native to Central and South America. Supplements and other products containing acai are frequently marketed to consumers as a weight-loss aid.

The settlements require the marketers to make it clear to consumers that their commercial messages are advertisements and not objective journalism, disclose to consumers any material connections they have with merchants, and collectively pay approximately \$500,000 to the FTC. The settlements also bar the defendants from making future deceptive claims about health-related or any other products.

#### FTC, CONSUMER FINANCIAL PROTECTION BUREAU SIGN MEMORANDUM OF UNDERSTANDING

On Tuesday, the Federal Trade Commission (“FTC”) and the Consumer Financial Protection Bureau (“CFPB”) announced an agreement to coordinate consumer protection efforts and avoid duplication as both agencies perform their law enforcement and regulatory missions. The CFPB was created after the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) in 2010. The Act requires the CFPB and the FTC to coordinate enforcement activities and promote consistent regulatory treatment of consumer financial products and services.

In the MOU, the two agencies have agreed to:

- meet regularly to coordinate upcoming law enforcement, rulemaking, and other activities;
- inform the other agency, absent exigent circumstances, prior to initiating an investigation or bringing an enforcement action;
- consult on rulemaking and guidance initiatives to promote consistency and reflect the experience and expertise of both agencies;
- cooperate on consumer education efforts to promote consistency of messages and maximum use of resources; and
- share consumer complaints.

#### NAD FINDS SUPPORT FOR WHONU COOKIE NUTRITIONAL CLAIMS

On Wednesday, the National Advertising Division (“NAD”) of the Council of Better Business Bureaus announced that it had determined that Suncore Products, LLC can substantiate certain nutritional claims the company made in Internet, print, and television advertisements for its “WhoNu? Nutrition Rich Cookies.” The claims included that each three-cookie serving of WhoNu cookies contained:

- “As much Fiber as a bowl of oatmeal;”
- “As much Calcium and Vitamin D as an 8 oz. glass of milk;”
- “As much Vitamin C as a cup of blueberries;”
- “As much Iron as a cup of spinach;”
- “As much Vitamin E as two cups of carrot juice;”
- “As much Vitamin B12 as a cup of cottage cheese and fruit;”
- “As much Vitamin A as an 8 oz. glass of tomato juice;”

- "Each...serving has 3 grams of Fiber, is an excellent source of Calcium, Iron, Vitamins A, B12, C, D & E, and has a total of 20 essential vitamins and minerals."

NAD also examined whether the advertising implied that eating a serving of the cookies was equivalent to consuming a serving of the comparative foods. The self-regulatory body determined that consumers were likely to understand that the comparison between the cookie and the comparative food were limited to the specific nutrient called out in the claim.

NAD also noted that SunCore avoided direct comparisons to whole fruits and vegetables, did not recommend the cookies as a substitute for healthy snacks and did not depict the actual healthy foods used in the comparisons on the product's packaging. In the past, NAD has expressed concern in previous cases about advertising claims for snack foods that make direct comparisons to whole fruits or vegetables.

[Go here](#) to read the NAD's press release on the findings.

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#### Upcoming Events

##### **Marcus Evans Legal Risks in Emerging Technologies – Alexandria, VA**

January 26-27, 2012

Venable is a proud sponsor of this event. [Melissa Landau Steinman](#) delivered a presentation on "Effectively Using New Promotional Techniques on Social Media and Mobile Applications Without Violating the Law."

##### **Understanding the Legal Issues in Social Networking, LIVE Webcast for The Knowledge Congress**

February 8, 2012

Venable is a proud sponsor of this event, join us for a presentation by [Melissa Landau Steinman](#) on the legal issues companies face related to social networking, and learn strategies to address the legal implications, mitigate risks and make the most of social networking efforts.

##### **ERA Great Ideas Summit – Miami**

February 27-29, 2012

Venable is a proud sponsor of this event, visit us at our Exhibit Booth (no. 105).

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