

FROM THE EDITOR IN CHIEF (Cont.)

On December 20, 2006, FTC staff issued an advisory opinion concerning Sony's proposal involving use of the term, "new" to describe returned consumer electronics products when certain conditions are met. Our next article, "FTC Staff Advisory Opinion Offers Guidance on 'New' Products," examines this FTC action.

A federal district court granted defendant's motion to dismiss plaintiff's complaint in a case involving Google's AdWords program and keyword meta tags. Our next article, "Lanham Act Case Involved Google's Adwords Program and Keyword Meta Tags," discusses this federal district court case.

Our NAD article takes a look at recent NAD cases in these two categories: (1) Implied Claims, and (2) General Efficacy Claim.

BRIEF NEWS OF NOTE

FTC SEEKS COMMENTS ON ENDORSEMENT/TESTIMONIAL GUIDES—FTC is seeking public comments on FTC's Guides Concerning the Use of Endorsements and Testimonials in Advertising. These Guides are designed to help businesses and others make sure their endorsement and testimonial advertising practices comply with the FTC Act. Deadline: March 19, 2006. FTC wants your comments about:

"The overall costs, benefits, and regulatory and economic impact of the Guides, including possible conflicts with state, local, or other federal laws, and what effects, if any, have changes in relevant technology, such as email and the Internet, or economic conditions had on the Guides."

The specific questions and information on submitting comments is available in the Federal Register Notice.

NOTE: The full text of this Notice is being sent to you as Special Report #2, along with this issue.

(16 C.F.R. Part 255: Guides Concerning the Use of Endorsements and Testimonials in Advertising: Request for Public Comments, January 16, 2007.)

NATIONAL DEBT CONSOLIDATION BUSINESS MISLEADS CONSUMERS:FTC—A nationwide debt consolidation business violated federal law by misleading and illegally telemarketing millions of consumers, according to FTC. The Commission is seeking consumer redress in federal district court, a freeze of the operation's assets, and an end to its allegedly illegal practices.

According to FTC's complaint, the defendants violated the FTC Act and the TSR by falsely claiming that—

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- they are a nonprofit entity;
- the only cost for their services is a monthly administrative fee that is less than \$49 and/or that there is no application fee;
- their services will result in estimated savings of a specified amount, typically several thousand dollars; and
- their services will reduce the consumer's monthly payment or total debt, or will improve their credit rating.

In fact, said FTC's complaint, in addition to a monthly administrative fee, defendants charge a fee equal to the monthly payment, which is collected from the consumer's first payment; they overstate the estimated savings, if any; their services do not necessarily reduce the consumer's monthly payment or total debt; and they do not provide any service to improve, or prevent deterioration of, a customer's credit record, history, or rating.

NOTE: The Commission authorizes the filing of a complaint when it has `reason to believe' that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The complaint is not a finding or ruling that the defendant has actually violated the law. The case will be decided by the court.

(FTC v. Randall L. Leshin, et al., United States District Court, Southern District of Florida, Civil Action No.: 0:06-CV-61851-WJZ, File No. 052-3146, January 8, 2007.)

FTC OK's FEDERAL REGISTER NOTICE ON NURSERY GUIDES—FTC approved the publication of a Federal Register notice concerning the FTC's Guides for the Nursery Industry. The notice notes that as part of the regulatory review process, FTC recently sought public comments on the Guides, which were originally promulgated in 1979 and address numerous sales practices for outdoor plants, including claims as to quantity, size, grade, kind, species, age, maturity, vigor, hardiness, growth ability, price, and origin or place where grown. The public comment period has now closed. FTC has evaluated the comments received, and has—with the exception of correcting one typographical error—decided to retain the Guides in their current form.

(16 C.F.R. Part 18: Guides For the Nursery Industry: Completion of Regulatory Review and Confirmation of Guides, January 3, 2007.)

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COURT ENTERS STIPULATED INTERIM AGREEMENTS AND ORDERS IN "POP-UP WINDOWS" CASE—A federal district court entered two

stipulated interim agreements and orders in the matter of Digital Enterprises, Inc., d/b/a Movieland.com. FTC's complaint against the defendants, announced on August 15, 2006, alleged that they run an operation that downloaded software that barraged consumers' computers with pop-up windows demanding payment to make the pop-ups go away. The Attorney General of the State of Washington also sued the defendants.

The interim agreements and orders require defendants to, among other things, make certain disclosures in their advertising for www.movieland.com, www.moviepass.tv, and www.popcorn.net in conjunction with their use of pop-up windows that seek payment from consumers. They also limit the frequency with which the defendants can use such pop-ups.

(FTC v. Digital Enterprises, Inc., d/b/a movieland.com, et al., United States District Court, Central District of California, Western Division, Civil Action No.: CV06-4923 CAS (AJWx), FTC File No.: 062-3008, January 12, 2007.)

With this issue of the Service, you are receiving
SPECIAL REPORT #2 in our series of six reports
to be made available to ACS subscribers
throughout 2007. It is the full text of 16 C.F.R. Part 255:
Guides Concerning the Use of Endorsements and Testimonials in
Advertising: Request for Public Comments, January 16, 2007.

FILING INSTRUCTIONS FOR CONTENTS OF THIS ISSUE

File all articles behind existing articles in the tabs noted:

File, "Lessons . . ." under Tab #15, New Media, Article #212.

File, "Fever . . ." under Tab #15, New Media, Article #213.

File, "ACI . . ." under Tab #2, General Articles, Article #558.

File, "Weight-Control . . ." under Tab #17, Food, Drugs, Cosmetics, Article #138.

File, "FTC . . ." under Tab #4, False, Unfair, Deceptive, Article #239.

File, "Lanham . . ." under Tab #8, Remedies (Private), Article #111.

File, "NAD . . ." under Tab #3, Self-Regulation, Article #427.

File, Bulletin #611 (pages 1-4) under Tab #1, Bulletins.

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