

Ad Law News and Views - May 16, 2020

May 16, 2020

["

RECENT NEWS

[As the Spread of Coronavirus Slows, a Contagion of Class Actions Has Only Begun](#)

As of April 30, 2020, more than 150 class actions have been filed directly relating to or stemming from the pandemic. Tens of millions of individuals have filed for unemployment, and the plaintiffs' bar is eager to "help." No amount of social distancing, and no impending treatment or vaccine, can insulate companies from the threat of class litigation.

While the specific factual circumstances underlying these claims are novel, the types of claims being asserted – and the jurisdictions where such actions are being filed – are not. Companies should stay on top of the following pandemic-related class action trends and, wherever possible, get ahead of or try to prevent the additional strain of a class action during these already difficult times.

[The Proof Is In The Product: NAD Recommends CBD Company Discontinue Claims](#)

On April 29, the National Advertising Division (NAD) [recommended](#) that Talyoni Professional, LLC and its affiliate, Ecoco, Inc. (collectively Talyoni) discontinue express claims that the companies' cosmetic and wellness products contain CBD, as well as product performance claims based on the presence of CBD in the products.

[Second Circuit Limits Copyright Damages To Those Incurred Within Three Years Prior to Suit](#)

In *Sohm v. Scholastic Inc.*, No. 18-2110, 2020 WL 2375056 (2d. Cir. May 12, 2020), the Court found, among other things, that monetary damages in a copyright infringement suit are limited to those incurred in the three years preceding the commencement of suit.

[Spotlight on Charitable Campaigns](#)

Here are a few resources for companies looking to enter into new commercial co-ventures or rekindle previous relationships:

[Ad Law Access Podcast](#)

[Cause Marketing – Commercial Co-Ventures: What You Need to Know Before Getting](#)

[Started](#) - Advertising and Marketing and Consumer Product Safety practice groups chair [Christie](#)

[Grymes Thompson](#) covered the commercial co-venture in an episode of the [Ad Law Access Podcast](#).

Advertising and Privacy Law Resource Center

We created a [Commercial Co-Ventures section](#) under [Advertising and Marketing Standards section](#) with checklists and information for you to use.

Tailored CLE Session

If your company would like to go deeper on CCVs, we may be able to provide a CLE webinar session to you and your team. Please contact workshop@kelleydrye.com for more details.

Receive posts as they happen by subscribing to the [Ad Law Access blog](#) by [email](#) or [RSS feed](#).

UPCOMING EVENTS

[Post-Equifax Data Breach Enforcement](#)

May 18, 2020", "Webinar
ABA's Consumer Protection Committee
[Alysa Hutnik](#)

[The California AG's Draft Regulations & the Road to CCPA Enforcement](#)

May 19, 2020", "Webinar
IAB's Privacy Law Webinar Series (Part 3)
[Alysa Hutnik](#)

[Milk from Nuts. Burgers from Soybeans. Can the States Regulate What You Call Them?](#)

June 2, 2020", "Webcast
Yale Law School's Abrams Institute for Freedom of Speech

ON DEMAND CONTENT

We have pulled together a selection of on demand content that we hope you find useful:

Webinars

This year, in conjunction with the launch of the [Advertising and Privacy Law Resource Center](#), we have been holding a series of webinars:

[Advertising 101 Webinar](#)

Covering the basics of advertising law:

Regulatory Overview

Claim Substantiation and Puffery

Disclosures

Endorsements and Testimonials

Made in USA Claims

Green Guides

Promotions

Privacy 101 Webinar

Walks through topics such as:

Privacy law 101

Data security and breaches

E-Mail, calls, and text marketing

Influencer 101 Webinar

Covers the legal issues surrounding social media influencers:

Key legal requirements for influencer campaigns

Notable enforcement actions, and what you can learn from them

Practical tips for managing influencers

Pretty Up: Cosmetics False Advertising Litigation Trends and Marketing Compliance Webinar

Topics include:

Class action litigation trends impacting the personal care products industry from year 2019, and our expectations for year 2020;

Beyond food and beverage: an overview of how key terms such as “healthy,” “natural” and “no preservatives” are being used for personal care products;

Advertising risk migration strategies; and

Other practical takeaways

Our Labor and Employment practice presented a two-part series “Getting Back to Work,” to guide employers through the snares of legal, logistical and practical considerations as the nation returns to work.

Part 1 - Preparations and Considerations for Employers

Part 2 - When the Rubber Hits the Road

PODCASTS:

- [Health Claims in the Context of COVID-19](#)

- [Answering Retailer Questions Related to COVID-19 Issues](#)
- [Update on ATDS Definition Under the TCPA](#)
- [Price Gouging](#)

The Ad Law Access podcast is available now through [Apple](#), [Spotify](#), [Google Podcasts](#), [SoundCloud](#), and [wherever you get your podcasts](#).

ABA SPRING MEETING 2020:

Kelley Drye attorneys took part in the American Bar Association's Antitrust Section Spring Meeting - this time virtually.

You can rewatch the sessions below:

[Briefing with the State Enforcers](#)

[What to Expect in FTC CP Enforcement](#)

COVID-19 RESOURCES

In addition to the webinars mentioned above, Kelley Drye is making the following COVID-19 resources available:

KELLEY DRYE'S COVID-19 RESPONSE

Kelley Drye's [COVID-19 Response Resource Center](#) is a dedicated source that provides guidance and addresses questions about legal and business concerns arising from the Coronavirus outbreak. Our priority is to closely monitor and track developments to help you stay informed, so that you can respond to the shifting landscape. To receive Kelley Drye's updates on COVID-19 legal issues, [sign up here](#).

COVID-19 DAILY WASHINGTON UPDATE

The Washington Update is a daily synopsis of federal government actions related to the COVID-19 pandemic. The synopsis covers actions coming from Congress, the White House and various federal agencies, including the CDC, the Departments of Labor, Health and Human Services, Homeland Security and Treasury/IRS, the Food and Drug Administration and the Federal Trade Commission, among others. You can sign up to receive the daily Washington Update by subscribing to our COVID-19 interest area [here](#). Archived editions of the Washington Update can be found [here](#).

COMMLAW MONITOR

As the COVID-19 pandemic rapidly unfolds, the Federal Communications Commission (FCC) has been active to keep communications services available through various waivers, extensions, and other regulatory relief. Kelley Drye's Communications Practice Group is tracking these actions and what they mean for communications service providers and their customers. [CommLaw Monitor](#) will provide regular updates to its analysis of the latest regulatory and legislative actions impacting your

business and the communications industry. Click on the [“COVID-19”](#) blog category for previous updates. If you have any urgent questions, please contact your usual Kelley Drye attorney or any member of the [Communications Practice Group](#).

IN CASE YOU MISSED IT

[States Place New Restrictions on Collection Efforts and Outbound Calls Amidst COVID-19 Pandemic](#)

[No Delay? What To Expect on CCPA Enforcement Timing](#)

[Anheuser-Busch Wins Big Battle in Corn Syrup Wars](#)

[CCPA Litigation Round-Up](#)

[Senate Republicans Release COVID-19 Privacy Bill](#)

[Finding Fevers: FDA Relaxes Rules On Temperature-Detecting Cameras](#)

[Update: White House Identifies Amazon Foreign Domains as “Notorious Markets” for Counterfeit Goods](#)

[TCPA In Jeopardy? US Supreme Court Reviews Constitutionality](#)

”]