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KATTISON AVENUE

Advertising Law Insights From Madison Avenue and Beyond

Fall 2021 | Issue 7

Letter From the Editor

As summer wanes and we begin a new academic year amidst ongoing uncertainty, we are reminded that the only constant is change. This issue of *Kattison Avenue* considers the latest changes in the world of advertising law, including the litigation updates, rulings and regulations impacting our practice.

First, we review recent litigation involving 1-800 Contacts' efforts to push back against competitors' use of its trademarked terms in search advertising, which integrates trademark and advertising implications. We next look at the recent Supreme Court decision involving the NCAA, the quick response from states, and what's to come in the evolving landscape of Name, Image and Likeness rights of student athletes.

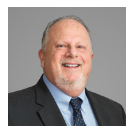
New FTC rules governing "Made in USA" claims may not be as clear-cut as the drafting appears. We dig deeper into the rules and a recent case as we try to reconcile the application of the rules to advertising practices. Advertisers also now have new guidance when it comes to targeting children. We cover the Children's Advertising Review Unit's modernized Guidelines for Responsible Advertising, which, for the first time, cover in-app advertising, influencers and discrimination issues.

Finally, we wrap up our coverage of litigation between Puma North America and a street artist who claimed the company infringed on his well-known "Roar Mark."

We wish our readers good health and continued resilience. We look forward to connecting with you, whether in person or virtually, at one of the upcoming industry conferences this fall.

Jessica G. Kraver

Second Circuit Puts the Focus on Search-Term Restrictions in 1-800 Contacts Decision



By David Halberstadter

Advertising on the internet is big business. It can also be cutthroat. One way companies market their goods and services online is via "search advertising." When an online shopper uses a search engine, the search engine's program typically returns two types of search results to the shopper, both of which provide links to websites. The second type of results are considered "organic," and appear because the search engine's algorithm deems them to be the most relevant to the shopper's search. But the first type of search results are "sponsored" ads, which appear because the owner of the featured website paid for its page to appear in that space. Sponsored ads almost always appear before the organic search results.

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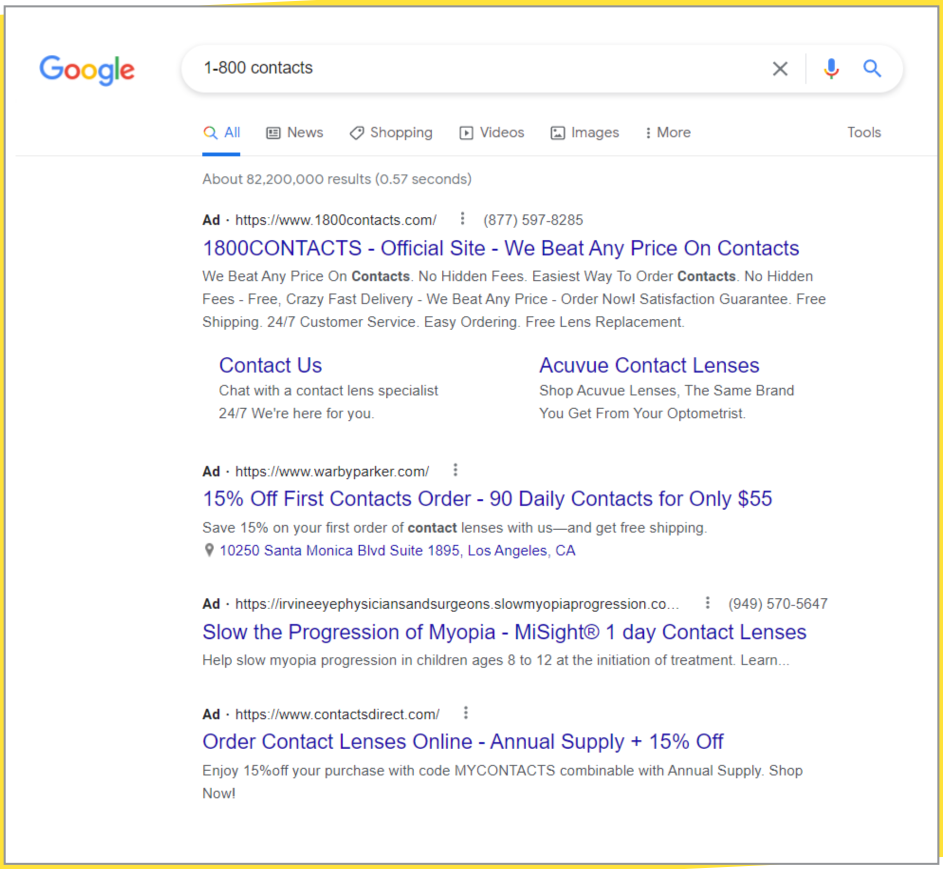
Search engines determine which sponsored ads to display on a search results page based, in large part, on the relevance of the shopper's search to various "keywords." Advertisers bid on these keywords during auctions hosted by the search engines. Competitors frequently bid on each other's brand names and trademarked terms so that their own ad runs when a consumer searches for a competitor. Imagine, for example, searching "McDonald's" and ads for Burger King pop up first.

1-800 Contacts, Inc. (1-800) is an online seller of contact lenses and is, perhaps, the most recognizable name among many contact lens e-tailers. 1-800's online competitors therefore seek to purchase "1-800 Contacts" and other of the company's trademarked terms as keywords to ensure that when a consumer searches for 1-800, its own website appears prominently in the sponsored search results, and potentially diverts customers away from 1-800. 1-800 often charges more than other online retailers, so when its competitors' ads appear in response to a search for 1-800's trademarked terms, its own online sales decrease. Not surprisingly, this does not sit well with 1-800.



In response to this type of conduct, 1-800 filed more than a dozen actions for trademark infringement against its competitors for the alleged misuse of its registered trademarks, both in keywords and otherwise. Whether or not 1-800's claims ultimately would have been meritorious, most of the competitors apparently preferred not to litigate these claims, and entered into settlement agreements. Under the terms of the settlement agreements, the competitors agreed not to bid on 1-800's name, URLs or variations of its trademarks when participating in future keyword auctions conducted by search engines. They also agreed to use "negative keywords," so that a search including one party's trademarks would not trigger a display of the other party's ads. In effect, 1-800's competitors agreed not to advertise their products when consumers conducted online searches using 1-800's trademarks.

In 2016, the Federal Trade Commission (FTC) issued an administrative complaint against 1-800, alleging that its settlement agreements unreasonably restrained truthful, non-misleading advertising in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. (Section 5 of the FTC Act provides that "unfair or deceptive acts or practices in or affecting commerce . . . are . . . declared unlawful.") The FTC asserted that the settlements unfairly prevented 1-800's competitors from disseminating ads that would inform consumers that the same contact lenses were available at a lower price from other online retailers, thereby reducing competition and making it more difficult for consumers to compare online retail prices.

The case was tried before an administrative law judge, who concluded that a violation had occurred. 1-800 appealed to the FTC, but a majority of the Commission agreed that the agreements violated Section 5 of the FTC Act. The majority categorized the settlement agreements as "inherently suspect" and then analyzed the procompetitive justifications 1-800 offered. It rejected 1-800's assertion that the benefits of protecting trademarks and reducing litigation costs outweighed any potential harm to consumers. 1-800 then turned to the Second Circuit.

The Second Circuit concluded that while "trademark settlement agreements are not automatically immune from antitrust scrutiny," the FTC erred when it found that the agreements constituted an unfair method of competition under the FTC Act. According to the Second Circuit, the FTC erred by treating 1-800's agreements as "inherently suspect," thereby placing the initial burden on 1-800 to justify the agreements. Instead, the FTC should have undertaken a "rule of reason" analysis to determine whether the settlements restrained trade. Under that analysis, the initial burden would have fallen on the FTC to prove that the agreements had an actual adverse effect on competition as a whole before 1-800 would have had to offer procompetitive justifications for the agreements. And, if 1-800 was able to provide such proof, the burden would have shifted back to the FTC to prove that any legitimate procompetitive benefits offered by 1-800 could have been achieved through less restrictive means. By erroneously treating 1-800's settlement agreements as "inherently suspect," the appellate court opined, the FTC in essence found them to be per se anticompetitive, without having to demonstrate direct evidence of harm or an anticompetitive impact.

The appellate court observed that the restrictions imposed on 1-800's competitors via the settlement agreements "could plausibly be thought to have a net procompetitive effect because they are derived from trademark settlement agreements." In fact, agreements to protect trademarks should be presumed to be procompetitive, the court stated, relying on Second Circuit precedent. "While trademark agreements limit competitors from competing as effectively as they otherwise might, we owe significant deference to arm's length use agreements negotiated by parties to those agreements," the court concluded. 1-800's settlement agreements restricted the parties from running advertisements on 1-800's trademarked terms, thus directly implicating trademark policy; and the FTC failed to meet its burden of proving that they were anticompetitive.

The Second Circuit's decision does not give online retailers free reign to enter into agreements with other retailers restricting how they advertise their own goods and services. But in the context of a bona fide trademark dispute, a settlement agreement that prevents a competitor from making keyword advertising use of the other's marks appears to get the benefit of the doubt.

Watch List: 1-800 Contacts Files New Search Engine Suit

As this issue of *Kattison Avenue* was being prepared to go to press, 1-800 Contacts filed a new federal lawsuit, this time alleging (among other claims) that eyeglasses retailer Warby Parker infringed on 1-800's trademarks by purchasing search engine keywords like "1-800 Contacts," "1 800 contacts," and "1800contacts" in order to advertise its recently-launched contact lens business. *1-800 Contacts Inc. v. JAND Inc., d/b/a Warby Parker*, Case No. 21-cv-06966 (S.D.N.Y., filed August 18, 2021).

We will keep an eye on this litigation and report on it more fully in a subsequent issue.

—David Halberstadter

A Highlights Reel on NIL Rights for Student Athletes

By Jeffrey A. Wakolbinger

In our Spring 2021 issue, we wrote about potential new advertising opportunities concerning the Name, Image and Likeness (NIL) rights of student athletes. There were several balls in the air:

- An antitrust challenge to NCAA rules was pending before the Supreme Court.
- The first state law granting NIL rights to college athletes was poised to go into effect.
- Several bills had been introduced in the US Senate and House of Representatives.
- The NCAA had tabled amendments to its bylaws that would permit student athletes to benefit from the use of NIL.

We're coming back to you now in the third quarter to provide an update and a bit of a play-by-play recap.

On June 21, the US Supreme Court issued an opinion in *National Collegiate Athletic Association v. Alston*. The Court unanimously upheld the lower court's injunction against rules restricting education-related expenses. It found the NCAA and its members qualified as a monopoly power in the relevant market and imposed rules that were stricter than necessary to achieve their procompetitive purpose of preserving consumer demand for college sports. In a concurring opinion, Justice Kavanaugh noted the narrowness of the Court's ruling, but he stated that "the NCAA's remaining compensation rules also raise serious questions under the antitrust laws." In short, the Court held only that NCAA rules that restricted education-related expenses that could be paid to student athletes stood in violation of antitrust laws, but it left a rather strong impression that other NCAA restrictions may pose the same problem. Perhaps sensing a slam-dunk opportunity, attorneys have already filed new lawsuits challenging some of those restrictions.

Although Congress has faced pressure to adopt a uniform law to address NIL rights and endorsement deals for student athletes, it has yet to do so. In the absence of a federal law, many states quickly got off and running with their own acts. California was first off the line with the Fair Pay to Play Act, but that law does not go into effect until 2023. Florida closed the gap and was first across the goal line, with a law that went into effect July 1. That law provides that college athletes may earn market-value compensation from third parties (not from the school) for their NIL rights and that colleges may not adopt or maintain contracts or rules that unduly restrict those rights. Nor may they unduly restrict student athletes' ability to engage agents for the purpose of securing such compensation for NIL rights.

State recognition of NIL rights for student athletes is quickly becoming par for the course. Laws similar to those signed in California and Florida have now been adopted in over half of the states and have taken effect in over a dozen, including many with popular teams in the SEC, AAC, and Big 10 Conference. The NCAA has responded with an interim NIL policy that went into effect July 1 for all three of its divisions. Students can now engage in NIL activities that are consistent with the law of the state in which their school is located. Students located in other states, to the extent they can find a means to exploit NIL rights, also will not be in violation of NCAA rules.

Thousands of players have picked up small endorsement deals. *The Wall Street Journal* reported in July about a local BBQ joint in Arkansas swooping in to strike a deal with some of the University of Arkansas' quarterbacks and offensive line. The restaurant gets to use them in social media promotion and the players get paid in merchandise and brisket. For some, the payout has been significantly higher. Prior to joining Tennessee State's basketball team, 19-year-old Hercy Miller reportedly signed a $2 million deal with Web Apps America. Miller's father is the son of rapper Master P, so he may have had a leg up on representation, but NIL consultancy firms have already stepped up to the plate to represent others and take their cut.

For many, including the NCAA, a uniform federal law remains the goal. But states have been quick to get with the program, and financial opportunities for student athletes (and brands) seem to be coming fast and furious.

New FTC Rules Leave Contemporary NAD/NARB Questions Unanswered

By Matthew Hartzler

This summer, the Federal Trade Commission (FTC) published final rules codifying its long-running standard for "Made in USA" product labels.[1] The Commission also announced its 2022 timeline for rolling out a new version of the Green Guides that focus on environmental claims.[2] But for legal advisors to advertisers, understanding how to stay out of hot water with the FTC and avoid the litigation bullseye of competitors is more fraught than merely following the latest FTC guidance.

Behind the backdrop and out of the spotlight of federal court, the BBB National Programs' National Advertising Division (NAD) and its National Advertising Review Board (NARB) wrestle with the FTC's guidance through arguments that test the outer limits of advertising claim standards. Recent challenges between competitors through this self-regulation dispute resolution mechanism reveal that these latest rules from the FTC leave a great deal of gray area still to cover.

Made in USA: 'All or virtually all'

The test for an unqualified claim of US origin is — and has historically been — whether "all or virtually all" of the product comes from the United States.[3]

This long-running standard emerged from FTC case law developed in the 1940s.[4] In 1997 and 1998, the Commission issued guidance elaborating on what it means to be "all or virtually all" domestically made.[5] Through this guidance, the FTC insisted that no "bright line" rule existed to determine whether a product satisfied the standard. Instead, three factors should be considered to determine the validity of a claim: (1) whether the final assembly or processing of the product took place in the United States; (2) the portion of the total manufacturing cost of the product that is attributable to US parts and processing; and (3) how far removed any foreign content is from the finished product.[6]

Though it might read like a straightforward, factor-balancing test, the first and third factors have more specific requirements. For final assembly, the 1997 guidance explained, "[A] product promoted as 'Made in USA' must have undergone its final assembly or processing in the United States. In particular, the product must at minimum, have been last substantially transformed in the United States."[7] Foreign content also has a pre-defined limit: a US-made product "should contain only a *de minimis*, or negligible, amount of foreign content."[8]

One complication is that these factors and requirements are conjunctive, not disjunctive. As one recent federal court had to

explain to a litigant, simply having final assembly be in the United States is "a necessary but not sufficient condition to satisfy the 'all or virtually all' standard."[9]

As part of its program to prevent deceptive "Made in USA" claims, the FTC finalized a new rule that went into effect on August 13.[10] Part of the goal of these new measures is to add a civil penalty to deter the "rampant Made in USA fraud" and protect "small businesses that rely on the Made in USA label, but lack the resources to defend themselves from imitators."[11]

- The other goal is to officially codify the "Made in USA" standard into a *final* rule.[12] A product will officially not meet the "all or virtually all" standard unless: "(1) Final assembly or processing of the product occurs in the United States, (2) all significant processing that goes into the product occurs in the United States, and (3) all or virtually all ingredients or components of the product are made and sourced in the United States."[13]

Though there remains some flexibility in defining "final assembly" or "significant processing," the three factors now function as required checkboxes that need to be crossed off before applying a "Made in USA" label.

Though these new — but also old — standards may bring some clarity for advertisers, review of recent NAD/NARB cases wrestling with the "Made in USA" standard reveals that disputes around the truthfulness of domestic-origin claims stray far from the three factors or requirements into broader questions that are left largely unanswered by the new regulations. For example, depictions of American flags on a website for Chinese-made mop pads suggested a "Made in USA" claim might be made to consumers implicitly, whether the advertiser intends the claim or not.[14] The J-B Weld saga, discussed below, tackled a threshold question and considered where a US-made product ends and its foreign packaging begins.[15]

Product or Packaging?

J-B Weld makes glue products and touts the fact that its products are "Made in USA" and "have always been made in the USA."[16] A competitor challenged the validity of these claims, and the NAD recommended that J-B Weld discontinue using them. The NAD reasoned that, although the glue might be made domestically, the tube, cap and applicator are all manufactured elsewhere. Because these elements contain the glue and allow it to be used by consumers, they constitute part of the "product" that must be "all or virtually all" manufactured domestically.[17]

On appeal to the NARB, J-B Weld argued that the glue within the tube is the product and what consumers really care about.[18] The NARB poetically translated in its own words: "[L]ong after the caps, applicators, and tubes have been discarded… the consumer is concerned with the ongoing performance of the substance found within the tube."[19] J-B Weld offered the analogy to toothpaste: "[T]he tube and cap are 'necessary' for use, and are not discarded until the paste is used up, but … their place of origin is not a material consideration for the consumer."[20]

On the front of the packaging of the product, J-B Weld touted its "re-sealable/no waste cap," which the panel felt demonstrated "the importance of the cap to the consumer." This persuaded the NARB to determine that the applicator caps, tubes, and syringes should be considered part of the "product" in an "all or virtually all" analysis. "[A] sufficient number of reasonable consumers would consider the caps, tubes, syringes, and/or applicators to be part of the 'product' covered by the advertiser's domestic-origin claims."[21]

As previously discussed, one factor in the FTC's "Made in USA" framework is the percentage of the total manufacturing cost that is done abroad.[22] J-B Weld did not feel comfortable revealing that cost data as it considered its production prices as highly confidential, trade secret information.[23] Thus, even if the tube, cap and applicator were small fractions of the overall cost of the product, it could not turn that factor in its favor. After rejecting the NARB's recommendation, J-B Weld was referred to the FTC.[24]

In March 2020, an FTC staff attorney issued a public letter advising that it would not pursue any further investigation or action regarding J-B Weld's claims.[25] This was in part due to J-B Weld's own remedial measures in updating its packaging and changing the domestic-origin claims on its company's general literature.[26] However, the FTC also declined a further investigation because the FTC disagreed with the NARB and its interpretation of the tube, cap and applicators as being part of the product. "FTC staff finds it is unlikely that reasonable consumers interpreted the unqualified US origin claims on these adhesive products as covering the incidental, discarded packaging."[27]

The Commission noted its lack of policy guidance specifically on this topic, but confirmed that it has not previously required manufacturers to account for the origin of packaging and cited a 1968 opinion deciding that "a manufacturer of domestically-

made vinegar need not disclose the origin of imported plastic containers in the absence of an affirmative representation that the bottles were made in the United States."[28] The FTC letter referred to the caps, tube and applicator as "incidental" packaging that "had no independent value to consumers and was typically discarded upon depletion."[29]

Though the FTC staff's opinion on glue tubes is now clear, it remains challenging to evaluate what to take away from the decision, especially given its departure from the NARB decision. The FTC letter did not address one of the NARB's primary findings; namely, J-B Weld's claims about the cap meant it had value to the consumer as part of the product. Accordingly, it is hard to predict whether future claims about packaging features — "easy open" or "spill free" — will then require such foreign-made packaging to meet the "all or virtually all" standard. When determining what elements of a product count as the "product," advertisers may need to evaluate what is typically discarded upon depletion versus what has independent value to consumers.[30]

For now, comparing the new FTC rules to the J-B Weld dispute suggests a disconnect between the rules promulgated and their interpretation and application by the NAD and NARB. For open questions that remain in other advertising areas like the Green Guides, advertisers will have to simply wait until 2022 to determine if the FTC clears up the NAD/NARB edge cases.

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(1) 86 Fed. Reg. 37031.

(2) 86 Fed. Reg. 35239

(3) 62 Fed. Reg. 63756.

(4) See, e.g., *In re Vulcan Lamp Works, Inc.*, 32 F.T.C. 7 (1940).

(5) 62 Fed. Reg. 63756; FTC, Complying with the Made in USA Standard 23-24 (1998), https://www.ftc.gov/tips-advice/business-center/guidance/complying-made-usa-standard.

(6) 62 Fed. Reg. 63756.

(7) 62 Fed. Reg. 63765.

(8) 62 Fed. Reg. 63765.

(9) *Benshot, LLC v. Lucky Shot U.S. LLC*, No. 18-C-1716, 2019 WL 527829 (E.D. Wis. Feb. 8, 2019), at *5.

(10) "FTC Issues Rule to Deter Rampant Made in USA Fraud," FTC (July 1, 2021), https://www.ftc.gov/news-events/press-releases/2021/07/ftc-issues-rule-deter-rampant-made-usa-fraud.

(11) *Id.*

(12) 86 Fed. Reg. 37023.

(13) 86 Fed. Reg. 37031.

(14) *Geerpres, Inc. (ADVANTEX Single-Use Disposable Microfiber Mop Pad)*, Report #6340, NAD/CARU Reports (Jan. 2020).

(15) *J-B Weld Company, LLC (Epoxies, Adhesives and Silicone Sealants)*, NARB Panel #251 (July 13, 2019).

(16) *J-B Weld Company, LLC (Epoxies, Adhesives and Silicone Sealants)*, NARB Panel #251 (July 13, 2019), at 2.

(17) *Id.* at 2–3.

(18) *Id.* at 3–4.

(19) *Id.* at 4 (emphasis in original).

(20) *Id.*

(21) *Id.*

(22) *Id.* at 5.

(23) *Id.* at 5–6.

(24) *Id.* at 6.

(25) Letter from Julia Solomon Ensor, Staff Att'y, FTC, to Neil C. Jones, Nelson Mullins Riley & Scarborough LLP (March 19, 2020), https://www.ftc.gov/system/files/documents/public_statements/1569323/p074204_j-b_weld_closing_letter_1.pdf.

(26) *Id.* at 2.

(27) *Id.*

(28) *Id.* at 2 n.4 (citing FTC Advisory Opinion No. 368, Disclosure of origin of imported plastic vinegar bottles (Oct. 9, 1969), https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-76/ftc_volume_decision_76_july_-_december_1969pages_1039-1125.pdf.

(29) *Id.* at 2.

(30) *Id.*

The Children's Advertising Review Unit Modernizes Its Guidelines for Responsible Advertising

By Alexandra R. Caleca

This summer, the Children's Advertising Review Unit (CARU) issued new guidelines that, for the first time, cover in-app advertising, influencer marketing and discrimination. CARU is an independent self-regulatory agency administered by the BBB National Programs that promotes responsible child-directed advertising.

On July 29, CARU issued the revised version of its Advertising Guidelines, which are widely recognized industry standards that ensure advertising directed towards children is not deceptive, unfair or inappropriate for its intended audience, while taking into account the limited knowledge, experience, sophistication and maturity of ordinary children. Advertisers, according to the revised guidelines, must pay special attention to recognize that children have a limited capacity to evaluate the credibility of information, may not understand the persuasive intent of advertising, and may not even understand that they are being subject to advertising at all.

With this in mind, CARU monitors advertisements found across all forms of media for compliance with its guidelines.

Traditionally, CARU's review extended to broadcast and cable TV, radio, children's magazines, comic books, the internet and mobile services. The revised guidelines, which will go into effect on January 1, 2022, now address modern digital and immersive forms of child-focused interactive media with heightened specificity. In particular, the revised guidelines provide guidance in connection with the use of video, influencer marketing, mobile apps, in-game advertising and in-game purchase options.

Although CARU seeks change through voluntary cooperation from advertisers, it also actively investigates cases of non-compliance and refers enforcement actions to the Federal Trade Commission (FTC) or state Attorneys General, if and when appropriate. Accordingly, advertisers should be aware that the revised guidelines:

- Apply to national advertising that is primarily directed towards children under the age of 13 (rather than 12) in any medium. This now aligns with the Children's Online Privacy Protection Act, the federal law that provides protections against the online collection of personal information from children under the age of 13;
- Make clear that advertising that portrays or encourages negative social stereotyping, prejudice or discrimination violates CARU's standards;
- Require disclosures and/or contextual clues to help children distinguish between advertising and non-advertising content;
- Require that disclosures take into account children's limited vocabularies and use simple, clear words, ideally with both audio and video components, to be most effective;
- Recognize that the mere appearance of a celebrity, influencer or authority figure in an advertisement can significantly alter a child's perception, so should proceed clearly, with caution and in accordance with updated FTC guidance on endorsements and influencer marketing; and
- Prohibit unfair, deceptive or manipulative tactics in apps and online games, including deceptive door openers or the use of social pressure to mislead or cause children to unknowingly or inadvertently engage in ad viewing or make in-app/game purchases. In addition, all advertisements, apps or games that allow children to make purchases must make it clear that the purchase involves real currency.

Moving forward, advertisers who market to children should, as CARU recommends, capitalize on the potential to serve an informational role and influence positive personal qualities and behaviors in children by keeping the revised guidelines top of mind.

The Rest of the Story: Update on Puma 'Roar Mark' Trademark Dispute

By David Halberstadter

In our Summer 2021 issue, we reported on the trademark infringement lawsuit filed by artist Christophe Roberts against Puma North America, Inc., in which the artist claimed that the athletic retailer wrongfully made use of his distinctive "Roar Mark" in "large national ad campaigns targeting its products to National Basketball League consumers." *Roberts v. Puma North America, Inc.*, Case No. 21-cv-2559 (S.D.N.Y. Filed March 25, 2021) .

Roberts is known for a series of sculptures that he created using recycled Nike shoeboxes, renowned among "sneakerheads" (individuals who collect and trade sneakers as a hobby). Puma incorporated arguably similar "teeth designs" into one of its apparel lines.

At the time of publication of our previous issue, Roberts had sought a temporary restraining order and preliminary injunction to prohibit Puma's continued use of its allegedly infringing designs on apparel and in marketing and advertising. Puma had opposed Roberts' motion, and the court had heard arguments on the motion but had not yet issued a ruling. This story now has a conclusion.

On May 12, the court denied Roberts' request for a temporary restraining order and a preliminary injunction. It found that Roberts failed to demonstrate a likelihood of succeeding on the merits of his claims because Puma's use of its own teeth designs was unlikely to confuse consumers into believing that Puma's designs were produced by or affiliated with Roberts.

Following the court's ruling, Puma filed an answer and a counterclaim to Roberts' complaint. But shortly thereafter, the parties negotiated a confidential settlement agreement and stipulated to the dismissal of Roberts' action.

Without knowing the terms of settlement, it is difficult to assess how positive the outcome was for Puma. Nevertheless, the lawsuit is a reminder to all businesses that incorporating contemporary imagery into their fashions and advertising campaigns comes with risks, which they should have experienced counsel assess before proceeding.

Katten’s Advertising, Marketing & Promotions Practice

Katten represents advertisers, advertising and promotions agencies, technology developers, content producers, and media and entertainment companies, in reimagining the connection to consumers. From clearance, privacy and regulatory obligations to smooth product launches and brand integration, we address concerns in a variety areas, including: ad, marketing and promotional programs; agency-client relationships; branded entertainment; contests and sweepstakes; internet distribution; licensing and vendor agreements; litigation (comparative and false advertising, First Amendment issues, Lanham Act, unfair competition laws, etc.); privacy and data security; talent and production agreements; user-generated content; and sponsorships.

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