

## Consumer Protection Conference Agenda

June 18-19, 2009

(Updated: 06.12.09)

### **Thursday, June 18, 2009**

**12:30 pm – 5:00 pm**

**Registration**

**1:00 pm – 1:15 pm**

**Welcome Address**

**James A. Wilson**

*Chair, ABA Section of Antitrust Law*

Vorys Sater Seymour & Pease LLP, Columbus, OH

**1:15 pm – 2:00 pm**

**Opening Remarks**

**David Vladeck**, Director, Bureau of Consumer Protection, Federal Trade Commission,  
Washington, DC

**2:00 pm – 3:15 pm**

**The FTC Chairs' Perspective**

The FTC and the states aim to protect the “reasonable consumer acting reasonably” from deception. But in the past, regulators have used a different, more paternalistic standard, and they still aim to protect members of vulnerable groups such as children, the elderly, and the terminally ill using a reasonableness standard tailored to those groups. How should regulators think about reasonable consumers in a pluralist, linguistically, educationally, and economically diverse society? How should the Commission deal with the explosion of available information, especially on the Internet, when some consumers may be unable to comprehend it?

***Moderator:***

**John E. Villafranco**, Kelley Drye & Warren, Washington, DC

***Speakers:***

**Timothy J. Muris**, O'Melveny & Myers LLP, Washington, DC

**Robert Pitofsky**, Georgetown University Law Center, Washington, DC

**3:15 pm – 3:30 pm**

**Break**

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**3:30 pm – 5:00 pm**

### **The Evolution of Privacy in a Facebook Age**

Changing Consumer Expectations of Privacy: Can the Law Keep Up?

Consumers increasingly hand over substantial amounts of information about themselves to commercial entities in order to receive benefits such as membership in social networking sites. But they may not understand exactly what they're giving up, or they may expect that their information will only be used in certain ways. Controversies over Facebook's use of members' purchasing information to advertise to other members illustrate that new methods of marketing may pose unexpected privacy challenges. This

***Moderator:***

**Lynda K. Marshall**, Hogan & Hartson LLP, Washington, DC

***Speakers:***

**Julie S. Brill**, Senior Deputy Attorney General and Consumer Protection Chief,  
Office of the North Carolina Attorney General's Office, Raleigh, NC

**Eileen Harrington**, Acting Director, Bureau of Consumer Protection, Federal  
Trade Commission, Washington, DC

**Leslie A. Harris**, President & CEO, Center for Democracy & Technology,  
Washington, DC

**Wendy Seltzer**, Berkman Center for Internet & Society, Harvard University,  
Boston, MA

**5:00 pm**

**Cocktail Reception** (Please bring badge for entry)

Dubliner Restaurant and Pub  
520 N. Capitol St. NW  
Washington, DC 20001

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### Friday, June 19, 2009

**8:00 am – 5:30 pm**

**Registration**

**8:30 am – 9:30 am**

**The Bureau Directors' Roundtable:**

The Bureau of Consumer Protection regularly closes investigations under Part 2 of its Rules of Procedures even though there is evidence that a Section 5 violation has occurred. Reasons offered for such closings include claim discontinuation, honest mistake, or substantial compliance with the law. What other factors might influence the FTC's decision whether to proceed? To what extent does the public interest weigh on the decision? What are some of the tougher closing decisions made in recent memory?

***Moderator:***

**Barry J. Cutler**, Baker Hostetler, Washington, DC

***Speakers:***

**J. Howard Beales III**, George Washington University, Washington, DC

**Jodie Bernstein**, Bryan Cave LLP, Washington, DC

**Lydia B. Parnes**, Wilson Sonsini Goodrich & Rosati, Washington, DC

**9:30 am – 10:30 am**

**Consumer Research in Policymaking: Applying Recent Findings Regarding Consumer Literacy and Behavior**

Researchers have long investigated how consumers process information about product benefits and risks. Growing empirical knowledge about consumer understanding of advertising claims, including disclosures and disclaimers, can be extremely beneficial to regulators and courts. This panel explores the state of the art of understanding consumer reception, and considers how research findings can be applied to specific disputes.

***Moderator:***

**August T. Horvath**, Kelley Drye & Warren, New York, NY

***Speakers:***

**Pauline M. Ippolito**, Acting Director, Bureau of Economics, Federal Trade Commission, Washington, DC

**Alan Levy**, Senior Scientist in the Consumer Studies Team at the Center for Food Safety and Applied Nutrition, Food & Drug Administration, Washington, DC

**Michael B. Mazis**, American University, Washington, DC

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**10:30 am – 10:45 am**

**Break**

**10:45 am – 11:45 am**

### **Presuming Consumer Reactions in Lanham Act Litigation and Industry Self-Regulation – Puffery, Materiality, and the Failure of *American Italian Pasta* as the New Standard**

In competitor actions under the Lanham Act, evidence of actual consumer deception is not required when a court determines that a claim is literally false; evidence of actual deception is disregarded when a court determines that a claim is mere puffery, or immaterial. Courts have struggled to find the appropriate role for extrinsic evidence, with an increasing focus on materiality. This panel examines, with a skeptical eye, the current state of the doctrine.

***Moderator:***

**Rebecca Tushnet**, Georgetown University Law Center, Washington, DC

***Speakers:***

**The Honorable Thomas Selby Ellis III**, US District Court Judge, Eastern District of Virginia, Alexandria, VA

**Bruce P. Keller**, Debevoise & Plimpton LLP, New York, NY

**Richard J. Leighton**, Keller and Heckman LLP, Washington, DC

**Andrea C. Levine**, Director, National Advertising Division, New York, NY

**11:45 am – 12:45 pm**

### **Use, Misuse, and Disregard of Evidence of Actual Confusion in Federal and State Regulatory Proceedings**

Evidence of actual consumer deception, whether shown by victims' testimony or properly conducted consumer surveys, is highly probative, and often required, in private litigation. Regulatory (and self-regulatory) agencies, by contrast, enjoy more freedom to conclude that a claim or practice is deceptive, even without consumer evidence. Are regulators using extrinsic evidence appropriately? Do their activities prove that common sense and experience are a good substitute for ad-specific evidence of deception, or should regulators be required to offer extrinsic evidence more often?

***Moderator:***

**Robert M. Langer**, Wiggin and Dana LLP, Hartford, CT

***Speakers:***

**Christopher A. Cole**, Manatt Phelps & Phillips LLP, Washington, DC

**Patricia A. Conners**, Office of the Attorney General, State of Florida, Tallahassee, FL

**C. Lee Peeler**, President & CEO, National Advertising Review Council, New York, NY

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**12:45 pm – 1:30 pm**

**Luncheon**

**1:30 pm – 2:15 pm**

**Luncheon Address: The Rise of the Consumer in the Obama Administration**

*Introduction:*

**Kevin J. O'Connor**, Godfrey & Kahn, Madison, WI

*Speaker:*

**Member of Congress**

**2:15 pm – 3:15 pm**

**Consumer Protection in Financial Transactions: The Need for a Financial Products Safety Commission**

Some commentators have proposed a Financial Products Safety Commission, “the equivalent of a Consumer Product Safety Commission for financial products, an agency whose purpose would be to protect homebuyers and investors from the finance industry’s most dangerous offerings.” This panel discusses this proposal and the role of consumer protection in the credit and mortgage crises as they continue to unfold.

*Moderator:*

**Dana B. Rosenfeld**, Bryan Cave LLP, Washington, DC

*Speakers:*

**Adam J. Levitin**, Georgetown University Law Center, Washington, DC

**Angela K. Littwin**, University of Texas School of Law, Austin, TX

**Peggy L. Twohig**, Associate Director for Financial Practices, Federal Trade Commission, Washington, DC

**3:15 pm – 4:15 pm**

**Green Marketing: Communicating Environmental Benefits to Effect Change and Sell Product**

Promises of environmental friendliness are among the fastest-growing ad claims, because consumers are deeply interested in improving the environment and minimizing their own impact on the planet. But consumers may not understand what “green” means, and environmentalists can be deeply divided—cloth diapers or disposable? Paper bags or plastic? This panel will investigate what we know about how consumers think about green claims, and what regulators can do to help them make informed decisions.

*Moderator:*

**Nancy J. Felsten**, Davis Wright Tremaine LLP, New York, NY

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***Speakers:***

**Ellen Goodman**, Rutgers University, Camden, NJ

**James A. Kohm**, Associate Director, Division of Enforcement, Federal Trade Commission, Washington, DC

**David G. Mallen**, Associate Director, National Advertising Division, National Advertising Review Council, New York, NY

**4:30 pm – 5:30 pm**

**Consumers Confronted by Old Challenges, New Technologies: Learning From Last Year's Mistakes**

As Internet businesses begin to mature, old assumptions about legal regulation of technology may have to be revisited. This panel will look at recent online consumer protection developments, with specific focus on whether the immunities conferred by Section 230 of the Communications Decency Act interfere with, or can coexist with, regulation of the statements businesses make about the user-generated content on their sites.

***Moderator:***

**Thomas F. Zych**, Thompson Hine LLP, Cleveland, OH

***Speakers:***

**Genaro Fullano**, Deputy Chief, Environmental Bureau, Federal Communications Commission, Washington, DC

**Eric Goldman**, Santa Clara University School of Law, Santa Clara, CA

**Catherine A. Miller**, Vice President Legal, Sprint Nextel Communications  
Reston, VA

**C. Brad Schuelke**, Assistant Attorney General, Office of the Texas Attorney  
General, Austin, TX