

# **KIRKLAND & ELLIS**

## **Advertising, Marketing & Promotions Seminar**

*Friday, June 26, 1998*

Registration & Continental Breakfast 9:00 - 9:30 a.m.

Morning Program 9:30 a.m. - 12:15 p.m.

Buffet Luncheon & Open Question Session 12:15 - 1:15 p.m.

Afternoon Program 1:15 - 3:30 p.m.

### **PROGRAM AGENDA**

#### **PART ONEC Advertising In Today=s Legal Climate**

*Day-to-Day Legal Issues That Arise When Advertising Consumer Goods And Services*

#### **PART TWOC Challenging And Defending Advertising Claims**

*How Advertisers Can Challenge Competitors=Ads And Defend Their Own*

#### **PART THREEC Working With Third Parties In Advertising**

*Legal Issues Resulting From Third Party Involvement In Advertising*

**Kirkland & Ellis  
200 E. Randolph Drive  
Chicago, Illinois 60601  
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## **PART ONE: Advertising In Today=s Legal Climate**

*Day-to-Day Legal Issues That Arise When Advertising Consumer Goods And Services*

### **Clearing Advertising Copy In Compliance With Federal And State Laws**

9:30 to 10:15 a.m.

*Speakers: David K. Callahan  
Ross M. Weisman*

- ☺ How to ensure that advertising is not "unfair," "deceptive," or misleading.
- ☺ Proper use of testimonials and endorsements.
- ☺ Product demonstrations and simulations -- what=s real and what=s not.
- ☺ Special rules for special words: e.g., "new," "free," "certified," "sale".
- ☺ Guarantees and warranties -- what should be disclosed?
- ☺ Special types of claims: e.g., price claims, comparative claims, health claims.
- ☺ The "Mail Order Rule."

### **Sweepstakes, Contests And Other Promotions**

10:15 to 10:35 a.m.

*Speakers: Ross M. Weisman*

- ☺ Legal requirements for conducting a sweepstakes or skill contest in the 50 states.
- ☺ Considerations when promoting sweepstakes via broadcast, print or online media.
- ☺ Conducting a sweepstakes promotion on the Internet.
- ☺ Drafting rules for a sweepstakes promotion -- what to consider.
- ☺ Requirements for gift certificate, coupon and rebate promotions.

**\*\*\* 10:35 to 10:45 a.m. Coffee Break \*\*\***

### **Advertising Compliance On The Internet**

10:45 to 11:00 a.m.

*Speakers: Jennifer A. Anderson  
Garland E. Autrey*

- ☺ What you should or should not include on your website.
- ☺ Proper use of your intellectual property in Internet advertising.
- ☺ The latest case law regulating advertising and marketing practices on the Internet.
- ☺ Privacy policies and their increasing importance.

- 🎧 Creating, developing and maintaining a website.

### **Substantiating Your Advertising Claims**

*11:00 to 11:20 a.m.*

*Speakers: James M. Amend  
Ross M. Weisman*

- 🎧 The difference between a claim requiring substantiation and mere "puffery."
- 🎧 Complying with the prior substantiation requirement.
- 🎧 What is adequate substantiation?
- 🎧 Employing suitable clearance procedures.

### **PART TWO: Challenging And Defending Advertising Claims**

*How Advertisers Can Challenge Competitors=Ads And Defend Their Own*

### **When The Government Calls: Dealing With Governmental Challenges To Your Advertising And Marketing**

*11:20 to 11:40 a.m.*

*Speakers: James M. Amend  
Mark L. Kovner*

- 🎧 The governmental entities who may challenge your advertising.
- 🎧 How did your company get singled out?
- 🎧 Ways in which companies can defend themselves in the face of a challenge.
- 🎧 Suggestions for dealing with a government investigation of your advertising.
- 🎧 Potential liabilities in the event of a government enforcement action?
- 🎧 Industry-specific regulations affect new business opportunities.

### **Challenging Your Competitors= Advertising**

*11:40 a.m. to 12:15 p.m.*

*Speakers: Allison I. Brown  
Sheri J. Engelken*

- 🎧 Litigating private civil claims in federal and state court.
- 🎧 Getting the most out of non-litigation challenge procedures: using ADR, the NAD, television networks, government agencies, and industry/trade groups.
- 🎧 Steps to take when competitors attack your products.
- 🎧 Special considerations: e.g., establishment claims, on-package claims, comparative

- ☺ advertising, what constitutes "advertising."
- ☺ Counter-advertising

**\*\*\* BUFFET LUNCHEON \*\*\***  
**WITH SPEAKERS AVAILABLE FOR INDIVIDUAL AND GROUP QUESTIONS**  
*12:15 to 1:15 p.m.*

**PART THREE: Working With Third Parties In Advertising**  
*Legal Issues Resulting From Third Party Involvement In Advertising*

**Tie-In Promotions, Supplier Agreements, and Sponsorship Agreements**

*1:15 to 1:35 p.m.*

*Speakers: Gregg Kirchhoefer  
Daniel J. Schaeffer*

- ☺ How to plan and conduct a sponsorship or supplier program.
- ☺ Partnering and co-branding.
- ☺ Negotiating and drafting agreements for tie-in promotions -- the key issues.
- ☺ Event marketing.
- ☺ Important aspects of dealing with talent.

**The Use of Third-Parties or Third-Party Properties in Advertising**

*1:35 to 1:50 p.m.*

*Speakers: Beverly G. Petravicius  
Paul R. Steadman*

- ☺ When do you need a release to use a third-party's property in advertising?
- ☺ Unfair competition, false endorsement and right of publicity -- a legal overview.
- ☺ Ambush marketing and famous symbols (e.g., Olympic logo, American Flag).
- ☺ Utilizing third-party's trademarks and copyrights in advertising.

**The Use of Consumer Surveys in Advertising and Litigation**

*1:50 to 2:10 p.m.*

*Speakers: Sheri J. Engelken  
Matthew P. Hammatt*

- 🗣️ The purposes of surveys in advertising litigation.
- 🗣️ Selecting a survey expert.
- 🗣️ How to conduct a survey -- the methodology, universe and questionnaire.
- 🗣️ The influence of consumer surveys during litigation -- should a litigant have one?
- 🗣️ How to attack an opponent's survey and defend your own in litigation.

**\*\*\* 2:10 to 2:20 p.m. Coffee Break \*\*\***

**Panel Discussion C Allocating Liability: The Advertiser, Agency, Retailer, And Insurer**  
 2:20 to 3:00 p.m.

*Speakers: David K. Callahan - Kirkland & Ellis*  
*Sharon E. Kohn - Rand McNally*  
*Carla R. Michelotti - Leo Burnett*  
*Sandra A. Miller - True North Communications*

- 🗣️ Contracting to avoid disputes and create the proper incentives.
- 🗣️ Liability considerations in the absence of express contracts.
- 🗣️ Blowing the dust off that insurance policy: what does it really cover?
- 🗣️ Dealing with the insurer to minimize out-of-pocket exposure.

**Advertising And Marketing In Europe**

3:00 to 3:30 p.m.

*Speaker: Morag Macdonald - Bird & Bird*

- 🗣️ New opportunities in comparative advertising.
- 🗣️ Consumer privacy rules.
- 🗣️ Enforcement trends.