2017

TRENDS
in Marketing Communications Law

ALCOHOL • CHILDREN'S ADVERTISING • COPYRIGHT • ENTERTAINMENT • ENVIRONMENTAL • FDA/COSMETICS • FTC/REGULATORY AND STATE • INFLUENCER CAMPAIGNS • LEGAL MARIJUANA • MOBILE/DIGITAL/PROGRAMMATIC • NAD • NATIVE ADVERTISING • PATENTS • PRIVACY & DATA • RETAIL • SPORTS • TRADEMARK

D&G | Davis & Gilbert LLP
ATTORNEYS AT LAW

Introduction

This issue explores the significant legal issues now facing the marketing communications industry and explains how these issues are likely to affect the industry in 2017, and beyond.

In 17 articles, Davis & Gilbert lawyers examine everything from developments affecting influencer campaigns, native advertising, advertising legal marijuana, daily fantasy sports and alcohol industries, to changes in trademark, copyright, patent and privacy law. We highlight where federal and state regulators, the industry's self-regulators and plaintiffs' lawyers are focusing, and discuss key decisions from courts across the country.

Our goal is to help clients navigate these waters. The lawyers at Davis & Gilbert have the depth and breadth of experience in dealing with all of these issues that remains unmatched.

Special thanks to our editorial team – Allison Fitzpatrick, Gary Kibel and Devin Kothari.

D&G | Davis & Gilbert LLP

Trends in Marketing Communications Law

2 **ALCOHOL**
Change Comes Slowly for Alcohol Brands

3 **CHILDREN'S ADVERTISING**
Children's Privacy and Children-Directed Influencer Marketing Face Greater Scrutiny

4 **COPYRIGHT**
Courts, Not Congress, Are Resolving Copyright Issues

5 **ENTERTAINMENT**
Can Anyone Be Happy Together After Sirius XM Copyright Decision?

6 **ENVIRONMENTAL**
Green Claims May Be Heating Up

7 **FDA/COSMETICS**
FDA Continues Crackdown on Cosmetics Marketing Claims, and Microbead Ban Begins

8 **FTC/REGULATORY AND STATE**
FTC Renews Focus on Efficacy and Safety Claims

9 **INFLUENCER CAMPAIGNS**
Influencer Campaigns See Increased Scrutiny

10 **LEGAL MARIJUANA**
Legal Marijuana's Uncertain Path Forward

11 **MOBILE/DIGITAL/PROGRAMMATIC**
Regulators Address Consumer Trust, Choice and Safety in Digital Marketing

12 **NAD**
Self-Regulation Meets Self-Mediation

13 **NATIVE ADVERTISING**
Native Advertising Faces Growing Regulatory Focus

14 **PATENTS**
Patent Troll Cases Unlikely to Drop Significantly

15 **PRIVACY & DATA**
Data Privacy and Security Laws Get Stronger, and Face New Challenges

16 **RETAIL**
Retail Practices Are in Vogue for Regulators, and Class Action Lawyers

17 **SPORTS**
The Playing Field Remains Unsettled for Daily Fantasy Sports

18 **TRADEMARK**
"Nominative Fair Use" Defense May Enable Use of Another's Trademark

ALCOHOL

CHANGE COMES SLOWLY FOR ALCOHOL BRANDS

Large and small alcohol brands are pursuing a similar marketing strategy of emphasizing brand history or craftsmanship in an attempt to appeal to consumers' increasing desire for authenticity, and are taking steps to "modernize" this highly regulated industry through new products and innovations.

As the "craft" boom continues in the United States, alcohol brands are looking to distinguish themselves by increasingly focusing on their "story." The challenge from a marketing perspective, is how to do this without violating federal and state regulations that restrict a brand's ability to message certain aspects of its origin or product qualities.

For large brands that may not currently have a craft product to highlight, the recent trend has been for them to create a new product more suitable for an "artisan" marketing strategy. In recent years, suppliers have been tripping over themselves to introduce new products and categories of adult beverages, such as uniquely flavored spirits and ales, as well as hard lemonades, ciders and sodas. These often are presented as small-batch craft products, but the obligation under federal law that the supplier or importer list its name on all advertising means that there is a risk that the message will come across as ingenuous. Marketers need to tread carefully when crafting the message.

The industry also has continued its push to test the limits of many existing and accepted alcoholic beverage industry norms, which have been accepted with varying degrees of success. There is a continuing push for direct-to-home alcohol shipments, and even the introduction of new and novel delivery vehicles, such as Anheuser-Busch InBev's joint venture with Keurig Green Mountain to develop an in-home alcohol drink system for beer and liquor. These new offerings will only increase, along with the marketing campaigns associated with them.

KEY TAKEAWAYS

The continued push by suppliers to bring new products and innovation to the U.S. marketplace presents a great opportunity for marketers to advertise these new offerings and to convince both the public and regulators of their usefulness.

Innovation in the alcohol industry faces strong resistance from many of the more entrenched interests, as well as from the antiquated alcoholic beverage legal framework, leading to interesting times within the industry.

A careful strategy is important for advertisers and agencies trying to push the limits in this evolving alcoholic beverage industry environment.

CHILDREN'S ADVERTISING

CHILDREN'S PRIVACY AND CHILDREN-DIRECTED INFLUENCER MARKETING FACE GREATER SCRUTINY

Allison Fitzpatrick, *Partner,* 212.468.4866, afitzpatrick@dglaw.com
Samantha G. Rothaus, *Associate,* 212.468.4868, srothaus@dglaw.com

Regulators and industry watchdogs, concerned that children are becoming more vulnerable to new technologies and sales techniques used by marketers, are taking a stronger stance against practices that violate children's privacy and marketing regulations.

Last year, the Federal Trade Commission (FTC) brought its first action under the Children's Online Privacy Protection Act (COPPA) against a mobile advertising network, InMobi, alleging that InMobi violated COPPA by collecting persistent identifiers (such as cookies) to serve children geotargeted advertisements. The FTC will continue bringing actions against websites and apps that violate COPPA, particularly if they collect persistent identifiers from children to serve behaviorally targeted advertising without verifiable parental consent.

The New York Attorney General recently resolved allegations, resulting in fines and remedial measures, that Viacom, Mattel, Hasbro and JumpStart allowed ad networks and advertisers to track children's activities on their websites in violation of COPPA. This action is likely to spur other state attorneys general to increase monitoring of websites and online services directed to children and to take similar enforcement measures.

Self-regulators and advocacy groups will continue to be active, particularly with respect to child-directed influencer marketing. The Children's Advertising Review Unit (CARU), the children's arm of self-regulation, brought an action last year against EvanTube, a popular YouTube channel featuring a boy unboxing and reviewing toys provided by sponsoring advertisers. According to CARU, EvanTube did not sufficiently disclose to children that the videos were advertising, and now EvanTube's videos must include a prominent audio disclosure at the beginning of each sponsored video stating that it is "advertising."

Additionally, several advocacy groups recently petitioned the FTC to impose stricter regulations for child-directed online influencers, such as EvanTube, arguing that children are less capable of understanding that influencer content is commercial advertising. These advocates believe that such influencer marketing is inherently deceptive, even with appropriate disclosures. Although the FTC may not act on these petitions due to First Amendment concerns, advocacy groups will continue to generate headlines by filing complaints against influencer campaigns that arguably are directed to children.

KEY TAKEAWAYS

Regulatory authorities will bring COPPA actions against websites and mobile apps that collect geolocation data from children or serve children behaviorally targeted advertisements without parental consent.

As the Internet of Things develops, regulators will also focus on the privacy implications of smart toys and smart TVs that collect personal information from children to ensure compliance with COPPA.

Self-regulators and advocacy groups will continue to scrutinize influencer marketing directed to children to ensure that children know whether their content is paid advertising.

COPYRIGHT

COURTS, NOT CONGRESS, ARE RESOLVING COPYRIGHT ISSUES

Ashima A. Dayal, *Partner,* 212.468.4912, adayal@dglaw.com
Kate Barry, *Associate,* 212.468.4926, kbarry@dglaw.com

The most significant developments in U.S. copyright law will be coming from the courts and not elected officials this year, continuing a trend from 2016.

Congress is not expected to expand copyright protection for clothing, combat offshore online piracy, broaden exemptions to software anti-circumvention protection or otherwise modernize the Copyright Act, despite demands from the public for these and other copyright reforms. Instead, the courts are likely to remain the principal source for meaningful substantive and procedural changes to copyright law.

For example, the Supreme Court recently issued a decision in the so-called "cheerleader uniform" case, creating a very permissive standard for determining whether the pictorial, graphic and sculptural features of a useful article are protected by copyright. Under this new standard the aesthetic features of an industrial design, like the surface decorations on a cheerleading uniform, are protected by copyright when those features can theoretically be separated from the industrial design, applied to another tangible medium, and exist as a freestanding pictorial, graphic or sculptural work. This decision gives the fashion industry and industrial design businesses broad protection and a robust tool to help fight knockoffs.

Also noteworthy is the long-running "dancing baby" case, which in 2016 held that a copyright owner may not send a Digital Millennium Copyright Act (DMCA) notice to a website, demanding takedown of allegedly infringing user-generated content (UGC) – there, a YouTube video of a baby boogieing to a Prince song – without first determining in good faith that the UGC is not a fair use. Currently a petition is pending before the Supreme Court for a decision that copyright owners must consider fair use under objectively reasonable standards, and not merely subjectively in good faith.

Relatedly, a lawsuit by the music industry last year against the video-sharing website Vimeo increased the proof required for copyright owners to establish that websites hosting UGC have "red flag" knowledge that the UGC is infringing, and, therefore, lose DMCA immunity. The court there held that website employees lack "red flag" knowledge unless they have actual knowledge that UGC is infringing or are aware of facts that make infringement obvious to an ordinary person. The case also held that copyright owners cannot impute "red flag" knowledge to websites merely because the websites suspected copyright infringement or failed to investigate or screen for copyright infringement.

Additionally, businesses that commission vendors to create copyrightable content should take careful note of a 2016 appellate court decision involving video footage commissioned by the actor Jared Leto, which held that, to be enforceable, a work-for-hire agreement must be entered into before the commissioned work is created. Interestingly, this decision is consistent with one circuit court, and in conflict with other circuit courts.

KEY TAKEAWAYS

Fashion designers and other creators of useful articles have received expanded copyright protection for their designs, giving them a powerful new tool to combat knockoffs.

Copyright owners must determine in good faith, and perhaps even objectively reasonably, that UGC is not a fair use before filing a DMCA takedown notice.

Copyright owners will face a high bar to prove that a website had "red flag" knowledge that UGC was infringing and, therefore, that the website should lose DMCA immunity.

Work-for-hire agreements should be executed before a work is created, or their enforceability will depend on the state law governing the agreements.

ENTERTAINMENT

CAN ANYONE BE HAPPY TOGETHER AFTER SIRIUS XM COPYRIGHT DECISION?

James L. Johnston, *Partner,* 212.468.4867, jjohnston@dglaw.com
Josh J. Gordon, *Associate,* 212.468.4834, jgordon@dglaw.com

Flo & Eddie Inc., the owner of the sound recordings such as "Happy Together" created by the 1960s band The Turtles, brought suit against Sirius XM on behalf of itself and a class of pre-1972 sound recording owners for broadcasting numerous The Turtles songs without paying a royalty for such use. As part of its analysis of the federal class action lawsuit, the Second Circuit Court of Appeals asked the New York Court of Appeals to determine whether there is "a right of public performance for creators of sound recordings under New York law and, if so, what is the nature and scope of that right." In December 2016, the New York Court of Appeals ruled that New York law does not recognize a common law copyright protection for the public performance of pre-1972 sound recordings.

Because the federal statute is silent on public performance rights in pre-1972 sound recordings, any protection provided to them would stem from state law. The New York decision explained that New York law protected pre-1972 sound recordings from copying and piracy, but had never provided copyright protection for a public performance of a pre-1972 sound recording that did not involve copying. The court noted that the music business had proceeded for decades under the assumption that these public performance rights were not protected, and that it would be unwise for a court to unilaterally upend that long-held business understanding. The court, however, left the door open to pre-1972 sound recording copyright holders by indicating that other causes of action, such as unfair competition, might provide another avenue to protecting pre-1972 works.

This case is important to owners of pre-1972 sound recordings, as well as any entity that seeks to use those sound recordings in commercial or artistic speech, for a number of reasons. First, it established a clear category of rights not protected under New York law and thus works that could be used by others in New York in certain instances without permission or paying royalties. Second, because the court reasoned that "the absence of any artist or record company attempting to enforce [their rights] in this state until now" was a critical component in finding that no such right existed, artists and rights holders should reevaluate how they are protecting (or failing to protect) other aspects of their copyrights to try to ensure that inactivity does not lead to further erosions of rights they may assume they have.

The New York case was one of three similar cases initiated by Flo & Eddie Inc. against Sirius XM, and the New York court's decision was contrary to a California decision holding that California law protected public performance rights in pre-1972 sound recordings. The California suit was settled at the end of 2016 on the eve of an appeal. This sets up a potential issue for national broadcasters in which a use in California requires permission and a royalty payment, but the same use in New York, or Florida, does not.

KEY TAKEAWAYS

Rights holders and broadcasters should consider how evolving state law impacts their copyrights in pre-1972 sound recordings and other categories of rights and works not explicitly covered by federal copyright law.

Those seeking to use pre-1972 sound recordings in digital media need to navigate a patchwork of state law on the existence of public performance rights in those recordings.

ENVIRONMENTAL

GREEN CLAIMS MAY BE HEATING UP

Justin H. Lee, *Associate,* 212.468.4894, jlee@dglaw.com

Although the climate change rhetoric coming out of Washington, D.C. may have some believing that regulatory scrutiny of "green" claims will soften, a closer look at the current political and social climate at the state level and in the private sector reveals that both the demand for green products and the use (and regulation) of green marketing claims actually could trend upwards this year.

It has become clear that a substantial segment of U.S. consumers are attracted to companies they perceive as doing something to combat environmental destruction. These consumers are willing to reward those companies through higher prices for environmentally-friendly products and services.

Companies are responding to consumer demand by working to develop innovative solutions to reverse the trend of environmental damage, but the Volkswagen emissions-test scandal suggests that some companies will go to great lengths to give their products a green hue even if undeserved. As a result, many state governors and attorneys general have made clear their intention to continue to strictly monitor and regulate advertisers' green claims. For example, ExxonMobil has been in the crosshairs of multiple state attorneys general investigating whether the energy company misrepresented its research about climate risks to the public.

Competitors have also been aggressively monitoring what they perceive to be "greenwashing" in their industries. For example, Energizer challenged advertising by LEI, which claimed the purchase and use of its products was a "carbon neutral" activity. In defense of these claims, LEI relied on third-party certifications it had received; however, the National Advertising Division of the Council of Better Business Bureaus (NAD) reminded LEI that, under the Federal Trade Commission's Green Guides, third-party certifications did not eliminate a marketer's obligation to ensure that it had substantiation for claims communicated by the certification, and it recommended that LEI discontinue these claims.

Marketers touting an environmental benefit must determine the legal way to communicate their claims. Toward that end, they should carefully consider how their products will be used by consumers in "real world" conditions when making green product claims.

KEY TAKEAWAYS

Marketers should avoid general unqualified positive environmental benefit claims such as "green" or "eco-friendly" because they are difficult to substantiate and may convey to consumers that a product has far-reaching environmental benefits and no negative environmental impact.

Marketers should also ensure that all environmental claims are properly qualified and are supported by competent and reliable scientific evidence.

In addition, marketers should understand and not misrepresent the true environmental cost of their product or service and should consider the environmental cost of manufacturing, disposal, use or shipping of the product or service.

FDA/COSMETICS

FDA CONTINUES CRACKDOWN ON COSMETICS MARKETING CLAIMS, AND MICROBEAD BAN BEGINS

Stuart Lee Friedel, *Partner,* 212.468.4818, sfriedel@dglaw.com
Brooke Erdos Singer, *Partner,* 212.468.4940, bsinger@dglaw.com
Rohini C. Gokhale, *Associate,* 212.468.4978, rgokhale@dglaw.com

Regulating cosmetics continues to be an important priority for the Food and Drug Administration (FDA), although it remains to be seen whether the new administration will take a different approach.

The FDA issued 30 warning letters to cosmetics companies in 2016, the most in recent history. The FDA is concerned with cosmetic claims that indicate that a product can affect a structure or function of the human body, or treat, prevent or mitigate a disease or its symptoms, as these claims indicate that a product is a drug rather than a cosmetic. The FDA singled out claims that a product could "promote collagen production," "reduce all types of hyperpigmentation," "lighten the skin," "fade dark spots" and "stimulate cell renewal." The FDA found that these claims rendered the products to be new and unapproved drugs.

In July 2017, the initial provisions of the Microbead-Free Waters Act of 2015 will go into effect. That means that, on July 1st, manufacturers no longer will be able to produce cosmetics containing microbeads within the United States. By January 1, 2018, all cosmetics that contain microbeads will be banned from sale. Microbeads are solid plastic particles that are less than five millimeters in size and are used for the purpose of exfoliating and cleansing. Microbeads are present in hundreds of cosmetic products and do not dissolve when rinsed off, leading to pollution in oceans and lakes.

KEY TAKEAWAYS

It is unclear whether the new administration will impact the FDA's increasingly conservative approach to cosmetics claims.

Companies should continue to vet all new product packaging, marketing and websites to ensure compliance with FDA regulations and review existing packaging and claims through a more conservative lens.

Companies that have not already done so, should review their product formulations to ensure that they will cease manufacturing cosmetics containing microbeads by July 1, 2017, and should clear current stocks of products containing microbeads by January 1, 2018.

FTC/REGULATORY AND STATE

FTC RENEWS FOCUS ON EFFICACY AND SAFETY CLAIMS

Ronald R. Urbach, *Chairman/Co-Chair,* 212.468.4824, rurbach@dglaw.com
Stuart Lee Friedel, *Partner,* 212.468.4818, sfriedel@dglaw.com
Louis P. DiLorenzo, *Associate,* 212.468.4805, ldilorenzo@dglaw.com

The Federal Trade Commission (FTC) has increased its enforcement efforts against marketers for failing to substantiate their efficacy and safety claims with competent and reliable evidence.

When evaluating claims about the efficacy and safety of foods, dietary supplements and drugs, the FTC typically has applied a substantiation standard of "competent and reliable evidence." The FTC has defined this standard as "tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results" that are "sufficient in quality and quantity … when considered in light of the entire body of relevant and reliable scientific evidence…."

Early in 2016, the FTC settled with Lumosity over claims that its "brain training" program could delay cognitive decline and reduce cognitive impairment associated with various health conditions, and that scientific studies proved these benefits. The stipulated order required Lumosity to pay $2 million and to ensure that any future health claims were supported by competent and reliable scientific evidence. The FTC similarly found that an application developer had violated the FTC Act by falsely claiming that its app would improve users' vision and reduce the need for glasses and contact lenses. Seeking to stem the exploitation of a public health crisis, the FTC sent warning letters last summer to ten online marketers selling Zika virus-protection products. The products included wristbands, patches, and stickers that purportedly could repel mosquitos that carried Zika or otherwise protect users from the virus. The FTC's letter noted that claims as to prevention of Zika infection had to be supported by well-controlled human clinical testing, using the species of mosquito that carried the Zika virus.

The FTC also recently unveiled an enforcement policy statement seeking to dispel misinformation about over-the-counter homeopathic drugs. According to the FTC, efficacy claims based on traditional homeopathic theories (dating back to the 1700s), rather than scientific evidence, likely were misleading. Although the FTC affirmed its commitment to enforcing the FTC Act in these cases, it also noted that these efficacy claims might not be misleading where accompanied by effective disclosures that there was no scientific evidence that the product worked and the product's claims were based only on theories of homeopathy from the 1700s that were not accepted by most modern medical experts. Even then, however, the FTC expressed doubt that these disclosures would dispel express statements about the products' efficacy.

KEY TAKEAWAYS

The FTC has remained focused on enforcing the "competent and reliable" standard against marketers that promote healthcare products.

Claims must be tailored to the supporting substantiation, and cannot overstate a product's efficacy in treating a particular condition.

With the departure of Chairwoman Edith Ramirez, the Trump administration will have the opportunity to appoint three new commissioners to the FTC and reshape the FTC's enforcement priorities going forward.

INFLUENCER CAMPAIGNS

INFLUENCER CAMPAIGNS SEE INCREASED SCRUTINY

Allison Fitzpatrick, *Partner,* 212.468.4866, afitzpatrick@dglaw.com
Paavana L. Kumar, *Associate,* 212.468.4988, pkumar@dglaw.com
Truan Savage, *Associate,* 212.468.4956, tsavage@dglaw.com

Marketers and their agencies are seeing increased regulatory scrutiny of their influencer campaigns as the popularity of influencers continues to grow and influencer networks become a greater marketing force.

The Federal Trade Commission (FTC) has focused its enforcement efforts on influencer campaigns in violation of the FTC's Endorsement & Testimonial Guides (the Endorsement Guides). For example, in March 2016, the FTC settled with Lord & Taylor regarding claims that the retailer paid fashion influencers to post photos of themselves wearing a dress from one of its collections on Instagram, but did not require any of the influencers to disclose that they had been compensated in exchange for their posts. Then, in July, the FTC settled with Warner Bros. Home Entertainment over claims that it failed to require its influencers to adequately and conspicuously disclose that they had been paid to promote the video game "Middle Earth: Shadow of Mordor" in their YouTube videos, highlighting the importance of the placement of disclosures over and above their mere inclusion.

The FTC generally has held marketers and their agencies primarily accountable for the actions of their influencers. Specifically, the FTC has stated that marketers "need to have reasonable programs in place to train and monitor members of their network" and are required to "instruct members of the network on their responsibilities for disclosing their connections" to the brand. As the prevalence and commercial clout of individual influencers grow, however, it would not be surprising to see the FTC bring actions against influencers directly, especially where celebrities or even pseudo-celebrities are involved. In the Warner Bros. case, for instance, although the FTC did not take action against any of the influencers involved, the FTC took the unusual step of specifically naming one particular influencer, PewDiePie, in its complaint, emphasizing that he had failed to comply with the Endorsement Guides.

The FTC is keeping a close eye on influencer activity across various online platforms, and undoubtedly will continue to focus on how influencer marketing campaigns are being presented to consumers in new social media formats and across evolving publisher platforms. As influencers are seeded by marketers across various different social media networks, including via online videos and branded entertainment content, the FTC will steer its focus toward the most popular social media platforms and potentially the most popular social media influencers to ensure that disclosures are being made in compliance with regulatory guidance and key principles.

KEY TAKEAWAYS

As marketers and their agencies increasingly hire influencers, the FTC's scrutiny of their influencer campaigns is likely to increase.

The FTC's focus on the adequacy of disclosures, as well as monitoring, will continue.

Although many expect the Trump administration to scale back the power of the FTC, which may result in less federal oversight in this area, state regulators – particularly in New York and California – will likely fill the void, so marketers, agencies and influencers should remain alert and ensure they are complying with the Endorsement Guides.

LEGAL MARIJUANA

LEGAL MARIJUANA'S UNCERTAIN PATH FORWARD

Joseph Lewczak, *Partner,* 212.468.4909, jlewczak@dglaw.com
Josh J. Gordon, *Associate,* 212.468.4834, jgordon@dglaw.com

Efforts to legalize marijuana took a major step forward in 2016, with four new states voting in November to legalize recreational marijuana use. It is now legal in eight states and the District of Columbia, covering almost one quarter of the country's population, with sales expected to reach over $21 billion by 2020. However, the future of the market for recreational marijuana will be determined in large part by the position the Department of Justice under President Trump and Attorney General Jeff Sessions takes on enforcement of the federal prohibition on marijuana.

President Obama's Attorney General, Eric Holder, indicated in the so-called "Cole Memo" that, so long as states created and enforced a robust set of regulatory protections, such as keeping marijuana from being sold to children or preventing state-authorized marijuana sales from becoming a cover for organized crime or trafficking operations, the federal government was unlikely to enforce federal law banning marijuana in those states. The Cole Memo, however, does not have the force of law and, instead, was simply a policy position set forth by the Justice Department. If the Trump administration decides not to follow the Cole Memo's guidance, it can choose to ignore it. Additional enforcement could take a number of forms, from shutting down dispensaries to raids by FBI agents to arrests of growers, sellers and distributors.

Signals from the Trump administration have been mixed, with some anti-marijuana talk from senior officials, but no concrete actions as of yet. On the one hand, marijuana enforcement was not a significant issue during the campaign, and President Trump previously has indicated that he thinks the issue was best left up to the states. On the other hand, Attorney General Sessions has a long history of strident opposition to marijuana legalization. When asked specifically about marijuana during his confirmation hearings and, in the words of Tom Angell, the Chairman of Marijuana Majority, his answers were "skillfully evasive." Sessions called some of the Obama-era Department of Justice's guidance on the issue "truly valuable" and has recognized that enforcing the federal ban on marijuana is a resource-intensive enterprise that might not be worth the costs. However, he has more recently noted that "it does remain a violation of federal law to distribute marijuana" and White House press secretary Sean Spicer in February said he anticipates "greater enforcement" of federal laws. Depending on the breadth of the crackdown, creative and media buying agencies could be targeted as well, under the theory that they are aiding and abetting an illegal activity.

As states that recently legalized marijuana spend 2017 drafting their specific marijuana regulations and setting up markets, the specter of a potential change in tone from Washington, D.C. looms in the background.

KEY TAKEAWAYS

Anyone interested in entering the marijuana advertising market, or providing marketing or other services, needs to be aware of potential liabilities given that marijuana remains illegal under federal law.

Because of potential criminal liability under an "aiding and abetting illegally activity" theory, marketers and advertisers should consult legal counsel before engaging in any marijuana-related activities on behalf of clients. Something as small as creating advertisements that target out-of-state individuals could run afoul of federal commerce regulations.

MOBILE/DIGITAL/PROGRAMMATIC

REGULATORS ADDRESS CONSUMER TRUST, CHOICE AND SAFETY IN DIGITAL MARKETING

Richard S. Eisert, *Partner/Co-Chair,* 212.468.4863, reisert@dglaw.com
Maxine Sharavsky, *Associate,* 212.468.4845, msharavsky@dglaw.com

Businesses and regulators are focusing on cross-device tracking, ad blocking technologies and ad fraud, with particular attention to consumer trust, choice and safety issues.

The cross-device guidance issued by the Digital Advertising Alliance (DAA) explains that consumer choice regarding multi-site and cross-app data (i) carries over to, or from, linked browsers and devices where choice is also exercised and (ii) applies to transfers of such data to non-affiliates from the corresponding device or browser where choice is exercised. The guidance also requires related privacy policy disclosures.

The Council of Better Business Bureaus and the Digital Marketing Association already have begun to enforce the guidance. Given a recent Federal Trade Commission (FTC) paper finding "very little explicit disclosure to consumers about cross-device tracking," marketers can expect continued scrutiny of cross-device tracking and related advertising activities.

The threat of ad blocking looms ever larger on publishers, marketers, and agencies, with some researchers predicting that industry losses could reach $35 billion by 2020. Research suggests that over 300 million people now block ads on mobile devices, twice as many as on desktops.

With legal remedies still uncertain, publishers are seeking practical ways to stem the tide. Approaches include withholding content or requiring payment from users employing ad blockers, prohibiting ad blocking under applicable terms of use, utilizing content that is harder to block and attempting to improve the user experience by minimizing ads' intrusiveness and increasing their relevance.

Industry stakeholders disagree on the appropriateness of using technology to block ad blockers or reinsert blocked ads, and it is likely there will be more discussion on whether these defensive technologies ultimately benefit users (by protecting the ad funding that supports content) or undermine their digital autonomy.

Finally, ad fraud continues to command the attention of the advertising industry. With ad fraud losses already estimated by the Association of National Advertisers to exceed $7 billion – the "Methbot" botnet was estimated to have cost $3-$5 million in daily video ad revenue – there has been increased activity in combating ad fraud. These efforts included criminal enforcement targeted at cyber-fraud, two new "Trustworthy Accountability Group" programs aimed at fraud and malware and an increased focus on contractual and technological protections.

Industry stakeholders likely will continue to collaborate in key areas and implement a variety of protections – whether legal, contractual or technological – alongside law enforcement to try to keep pace with a continuously evolving threat.

KEY TAKEAWAYS

Companies tracking consumers across devices should confirm they are complying with the DAA's cross-device guidance.

Marketers, agencies and publishers have several practical approaches to mitigating the effects of ad blocking technologies and should carefully consider their positions regarding the use of defensive technologies to circumvent ad blockers.

Marketers should remain up-to-date and active in confronting ad fraud, as increasingly sophisticated threats continue to emerge.

NAD

SELF-REGULATION MEETS SELF-MEDIATION

Ronald R. Urbach, *Chairman/Co-Chair,* 212.468.4824, rurbach@dglaw.com
Aaron Taylor, *Partner,* 212.468.4984, ataylor@dglaw.com
Louis P. DiLorenzo, *Associate,* 212.468.4805, ldilorenzo@dglaw.com

Revisions to the challenge and appeal process recently introduced by the National Advertising Division of the Council of Better Business Bureaus (NAD) are making proceedings before the NAD considerably more efficient for challengers and advertisers.

One of the more notable revisions to the NAD's Policies and Procedures was the addition of Rule 2.2(E), which provides that the NAD will administratively close a case if the challenger and advertiser reach a private settlement. Prior to the introduction of this rule, the NAD's discretion to close a case by consent of the parties was based on the far more amorphous Rule 2.2(B)(1)(f), which allows the NAD to administratively close a case if the allegations at issue are "without sufficient merit to warrant the expenditure of NAD/CARU's resources." Importantly, when the NAD administratively closed a case pursuant to Rule 2.2(B)(1)(f), it typically conducted a review of the settlement reached between the parties to ensure it resolved all "public interest issues" related to the challenged advertising campaign.

In contrast, under the new Rule 2.2(E), the NAD will automatically close a case upon written agreement of the parties. Although the NAD reserves the right to independently bring its own complaint based on the advertising at issue, the language of Rule 2.2(E) makes clear that the NAD respects the wishes of the advertiser and challenger in resolving the dispute privately. In short, this procedural change makes settlements far more efficient and certain, and enables advertisers and challengers to reach private settlements without the NAD's involvement.

Unsurprisingly, the addition of Rule 2.2(E) has dramatically increased the number of challenges that are privately settled. During the year immediately following the introduction of Rule 2.2(E), eight challenges were administratively closed under that rule – the same number of challenges administratively closed during the preceding five years pursuant to Rule 2.2(B)(1)(f).

KEY TAKEAWAYS

The NAD's revised rules further the organization's goal of providing efficient and cost-effective resolution of advertising disputes.

Rule 2.2(E)'s deference to private settlements will encourage challengers to negotiate directly with advertisers to reach private resolutions of their disputes.

NATIVE ADVERTISING

NATIVE ADVERTISING FACES GROWING REGULATORY FOCUS

Paavana L. Kumar, *Associate,* 212.468.4988, pkumar@dglaw.com

The continuing growth in native advertising is leading to increasing regulatory scrutiny into whether consumers can distinguish native advertisements from surrounding non-paid content, and whether disclosures are being used effectively.

Consumer protection principles apply to native advertising, as the Federal Trade Commission (FTC) has made clear in its "Enforcement Policy Statement on Deceptively Formatted Advertisements and Native Advertising: A Guide for Businesses." The FTC wants consumers to understand when content is paid for by a marketer to promote the marketer or its products. According to the FTC, if consumers cannot distinguish native advertising from surrounding non-commercial content, disclosures such as "advertisement" may be necessary to prevent consumer deception.

Complicating the matter is that marketers are seeing a more nuanced phase of enforcement from the FTC, state attorneys general, and the National Advertising Division of the Council of Better Business Bureaus (NAD) that focuses not only on the existence of disclosures, but on their quality and adequacy. It also is unclear whether the FTC will take action against labels such as "sponsored content" and whether marketers, agencies, or publishers will be held responsible for such labels. Thus far, the FTC has focused on the marketers. Although it is possible that the FTC could take a flexible stance on disclosures such as "sponsored content" if there were adequate evidence that they were readily understandable and clearly identified the content's commercial nature, unless and until that occurs, marketers should evaluate using FTC-sanctioned labels that specifically designate paid content as "advertising" or "sponsored advertising content."

Emerging formats such as mobile video, augmented and virtual reality and messaging apps present new challenges for marketers balancing the need for compelling brand content with regulatory compliance. Mobile video requires disclosures tailored for smartphone-sized screens and that are visible before consumers watch the video. Augmented and virtual reality games and apps present unique challenges because consumers have greater control over the content they interact with, so marketers need to work with technology vendors to ensure that consumers are unable to bypass disclosures. Messaging apps such as Facebook Messenger and Viber may allow consumers to share native ads with family and friends, but disclosures cannot be left behind and must attach to each message.

KEY TAKEAWAYS

Publishers, marketers and agencies need to develop strategies for compliance to ensure they are one step ahead of the regulators.

Native advertising, or content promoting an advertiser or its products, must be distinguishable from non-commercial content. Disclosures such as "advertising" or "sponsored advertising content" may be necessary.

In addition to the FTC, state attorneys general and the NAD are monitoring for deceptive native advertising practices.

To mitigate risk of an enforcement action, publishers, marketers and agencies should adopt internal procedures to ensure best practices including regularly reviewing marketing practices, developing internal native advertising policies, and updating website disclosures to help to ensure compliance in this rapidly changing area.

PATENTS

PATENT TROLL CASES UNLIKELY TO DROP SIGNIFICANTLY

Marc J. Rachman, *IP Litigation Partner,* 212.468.4890, mrachman@dglaw.com
Devin A. Kothari, *Associate,* 212.468.4902, dkothari@dglaw.com

The statistics are striking. "Patent trolls" (companies that do not create products or services based on their patents, but instead use patents to extort license fees) are continuing to file large numbers of patent infringement lawsuits, now against advertising agencies, restaurants, retailers, financial institutions, and other businesses not typically subject to patent risk. Indeed, more than 4,500 patent infringement actions were filed in 2016, the fifth straight year with at least that many new patent infringement suits.

Of particular concern is that patent trolls have begun collecting "software" or "business method" patents covering basic digital technologies such as scanning documents or using online shopping carts on websites. In the past, however, despite the broad applicability of these patents, the Supreme Court's 2014 decision in *Alice v. CLS Bank* provided defendants some cover, labeling many of these technologies unpatentable "abstract ideas" and questioning their validity.

Two recent court decisions, however, indicated that the pendulum may have begun to swing back in favor of patent holders. In one, the U.S. Court of Appeals for the Federal Circuit noted that software and business methods were patentable when they improved how computers operated. In another, it noted that these patents were valid where they did "significantly more" than perform an abstract idea on a computer. These cases provide hope to patent trolls seeking to defend against Alice challenges.

In addition, patent trolls also are finding it easier to recover damages. For example, in *Halo v. Pulse*, the Supreme Court relaxed the standard for proving willful infringement, noting that a patent owner's reasonable defenses may not be enough to prevent tripled damages. Moreover, the Supreme Court has heard arguments in *SCA Hygiene v. First Quality Baby*, and expressed skepticism as to whether a long delay in filing suit could limit recovery. If the court eliminates this defense, it is likely that patent trolls will delay filing for as long as possible to maximize damages.

The news for defendants, however, is not all grim. The Supreme Court will hear *TC Heartland v. Kraft Food*, where it will assess whether patent trolls may continue their current practice of bringing suit wherever allegedly infringing products were sold. Depending on the court's decision, patent cases may migrate from plaintiff-friendly Texas, where many patent troll suits are currently filed, to marginally more defendant-friendly Delaware.

KEY TAKEAWAYS

Patent infringement is a risk for all industries and requires a comprehensive risk management strategy integrated into every aspect of a company's business that includes filing for and enforcing patents, identifying and clearing patent risks, instituting contractual strategies for risk-shifting and defending allegations of patent infringement.

Recent court decisions upholding the validity of software and business method patents and easing restrictions on damages have favored patent trolls.

Defendants may find relief as the Supreme Court considers rules that would limit patent troll forum-shopping.

PRIVACY & DATA

DATA PRIVACY AND SECURITY LAWS GET STRONGER, AND FACE NEW CHALLENGES

Gary A. Kibel, *Partner,* 212.468.4918, gkibel@dglaw.com
Oriyan Gitig, *Counsel,* 212.468.4880, ogitig@dglaw.com
Vivian Wang, *Associate,* 212.468.4927, vwang@dglaw.com

As data becomes more and more commoditized, domestic and international laws and regulatory actions continue to focus on privacy rights and data security.

The Federal Trade Commission (FTC) has issued several reports, tools, and guidance in the privacy and data security area, including a report on balancing privacy and innovation, a tool to help health application developers better understand the federal laws that apply to their applications, and an online cross-device tracking report focused on new tracking technologies in apps and across multiple devices.

The FTC also has increased its enforcement efforts, with high profile cases involving companies including InMobi, Oracle, Vulcun, Ashley Madison and ASUS. Whether this enforcement trend will continue may depend, in part, on who the Trump administration will appoint to occupy the vacant FTC commissioner positions.

While the FTC continues to strengthen its privacy and data security standards, states have been updating their privacy regulations and protections. Many states impose a "reasonable safeguards" standard to protect personal information, but it has been unclear what constitutes "reasonable safeguards."

Massachusetts and Oregon have set out more specifics in their interpretation of "reasonable safeguards," but California was the first state to define it. In a recent data breach report, the California Attorney General opined that failure to implement all 20 controls listed in the Center for Internet Security's Critical Security Controls constituted a lack of reasonable security.

A number of international privacy law developments also have implications for marketers and other businesses. The United States and the European Union approved the EU-U.S. Privacy Shield and the EU adopted the General Data Protection Regulation (GDPR), effectively replacing the EU Data Protection Directive and imposing new consumer privacy requirements on companies handling data from the EU with a compliance deadline of May 2018.

Artificial intelligence (AI) has joined "Big Data" and the "Internet of Things" as new privacy challenges. Companies such as Amazon, Google and Apple have rolled out AI-enhanced entertainment systems that depend on data collection (*e.g.*, Amazon Echo, Google Home and Apple HomeKit). Consumers have shown that they are willing to give out their data in exchange for new "convenience technologies," but like all new technologies, this involves risk, and the "machine learning" characteristic of AI technologies may pose challenges for a consent-based model of data collection. How this form of data collection will affect the regulatory landscape remains to be seen.

KEY TAKEAWAYS

Companies should reassess their data security infrastructure and written privacy and information security policies.

Companies should assess whether they have in place the necessary controls that constitute "reasonable safeguards."

Companies that handle personal data of EU residents or process data in the EU need to ensure that they are in compliance with the GDPR before the May 2018 deadline.

Companies involved in AI technology should put privacy at the forefront of their priorities.

RETAIL

RETAIL PRACTICES ARE IN VOGUE FOR REGULATORS, AND CLASS ACTION LAWYERS

Joseph Lewczak, *Partner,* 212.468.4909, jlewczak@dglaw.com
Louis P. DiLorenzo, *Associate,* 212.468.4805, ldilorenzo@dglaw.com

The Federal Trade Commission (FTC), state regulators, and plaintiffs' lawyers are focusing on retail and direct-to-consumer practices ranging from membership and subscription plans to discount pricing and other retail practices.

For example, last August, the FTC settled with I Works and various related individual and corporate defendants for over $280 million in suspended judgments. The FTC alleged that the defendants had enrolled consumers in supposed "trial memberships" for bogus money-making and government grant opportunities, and then proceeded to charge them up to $59.95 in recurring fees for additional programs that the consumers had not agreed to purchase.

The Washington Attorney General similarly settled with a cosmetics startup over allegations that the startup had offered consumers a "free" welcome box, but had not adequately disclosed that consumers would be enrolled in subscription plans for between $19.99 and $24.99 per month after enrollment. In December, the Los Angeles City Attorney's office filed lawsuits against four of the largest retailers in the United States over allegations that they were over-inflating their "original" and "regular" prices (also known as "reference" prices) and using deceptive "buy 1 get 1 free" offers. A class action suit against a software developer alleging claims of deceptive auto-renewal practices and pricing was settled for $80 million. When consumers agreed to enroll, the developer allegedly promised that their subscriptions would auto-renew at the same prices that the developer was offering to the public. According to the plaintiffs, the developer would auto-renew at prices that were higher than both the prices offered to the public and the suggested retail prices set for retailers.

Some disputes involved more subtle retail practices. In April 2016, the New York Attorney General settled with a national pharmacy and convenience store chain over allegations that the chain mislabeled both its advertised and in-store prices, misrepresented that products were a "great buy," "last chance" or "clearance" and failed to provide consumers with clear and consistent information about its rewards program. The chain agreed to a $500,000 monetary settlement and to amend its sales practices going forward.

KEY TAKEAWAYS

With false reference price class actions – some settling for as much as $50 million – and related regulatory actions showing no signs of letting up, online and brick-and-mortar retailers must continue to ensure that their reference prices fairly and accurately represent the normal prices offered to consumers.

As recurring subscriptions become more ubiquitous online, direct-to-consumer marketers must ensure that they clearly and conspicuously disclose, and obtain affirmative consent to, the terms of all auto-renewal and subscription plans.

Because regulators will read the "fine print" even if consumers do not, retailers must ensure that they are clearly and conspicuously disclosing the material terms and limitations of their rewards programs and other promotions.

SPORTS

THE PLAYING FIELD REMAINS UNSETTLED FOR DAILY FANTASY SPORTS

James L. Johnston, *Partner,* 212.468.4867, jjohnston@dglaw.com
Josh J. Gordon, *Associate,* 212.468.4834, jgordon@dglaw.com

After playing defense for most of 2016, the leaders of the daily fantasy sports (DFS) industry made an announcement they hope will allow them to move ahead on offense in 2017. However, mounting legal and regulatory costs might doom them before they can cross the goal line.

Last year, New York passed a law that explicitly made DFS legal and put to rest lingering uncertainty that it might constitute illegal gambling in that state. However, the New York law did not end the debate nationwide, and the two biggest DFS companies, FanDuel Inc. and DraftKings, Inc., continue to try to persuade state legislatures across the country to allow their unique brand of fantasy sports to operate in their states.

Industry commentators cited mounting legal and lobbying bills for both companies as a significant reason the two companies announced a merger in November 2016. But the merger presents a new set of challenges. FanDuel and DraftKings are by far the two largest companies in the DFS field, together accounting for more than 90 percent of the market. The U.S. Department of Justice or the Federal Trade Commission, or both, could choose to scrutinize the deal for antitrust violations. That level of market concentration within an industry historically has resulted in significant regulatory scrutiny.

The DFS industry is on a much different trajectory than it was just a year ago. Earlier forecasts anticipated DFS revenues to reach $2.5 billion by 2020, but recent forecasts have lowered these estimates a hundred-fold. Moreover, it is unclear at this juncture how aggressively the new administration will pursue antitrust matters.

A central issue in analyzing the merger will be defining the scope of the market. FanDuel and DraftKings certainly will argue that DFS is a small portion of the larger fantasy sports and sports gaming market. Even combined, the two entities represent a small portion of the gaming market.

Defining themselves as part of the larger gaming market for antitrust purposes poses its own challenges. They have based their arguments for legalization with state regulators on the premise that DFS should be considered distinct from gambling. A pivot to be considered part of the gaming market could jeopardize those arguments in states still considering whether to legalize DFS. One possibility is that regulators determine, for example, that the market for daily fantasy baseball is different and distinct from daily fantasy football and permit a merger but prohibit the combined company from conducting games in certain sports.

Regardless of how the merger is resolved, the DFS industry will continue to face challenges, including skeptical state regulators and a market whose growth has slowed. Sponsors, marketers and others interested in partnering with DFS providers should be aware of the long term issues facing the industry.

KEY TAKEAWAYS

The DFS industry continues to face antitrust scrutiny and state regulatory challenges.

Sponsors, marketers and others interested in doing business with the DFS industry should use caution in the face of ongoing legal uncertainty.

TRADEMARK

"NOMINATIVE FAIR USE" DEFENSE MAY ENABLE USE OF ANOTHER'S TRADEMARK

Brooke Erdos Singer, *Partner,* 212.468.4940, bsinger@dglaw.com
Joy J. Wildes, *Counsel,* 212.468.4974, jwildes@dglaw.com

Certain third-party trademark uses can be deemed a "nominative fair use" that does not infringe another's trademark rights even in the absence of permission to use the other's mark. For example, "Our show will feature the GRAMMY AWARD® winning artist…." is a line that contains the registered trademark of the National Academy of Recording Arts and Sciences. Yet, use of this line by an entity other than The Recording Academy without the term "GRAMMY AWARD®" would not make any sense. In instances such as this, courts have permitted use of a trademark as a "nominative fair use" and, therefore, acceptable, even though permission has not been obtained.

Unfortunately, there are no bright line rules to determine when a use is a nominative fair use, and courts in different jurisdictions apply different standards. Generally, however, the following three legal factors (developed in the original Ninth Circuit case, *New Kids on the Block v. News America Publishing, Inc.*) are instructive. First, the product or service must be one not readily identifiable without use of the trademark. Second, only so much of the mark may be used as is reasonably necessary to identify the product or service. Third, the user must do nothing that would, in conjunction with the mark, suggest sponsorship or endorsement by the trademark holder.

The U.S. Court of Appeals for the Second Circuit ruled on the nominative fair use issue in 2016 in *International Information Systems Security Certification Consortium, Inc. v. Security University, LLC*, and added yet another standard that incorporated the three factors above along with the likelihood of confusion factors used in an infringement analysis. Some of the elements considered in a likelihood of confusion analysis are the strength of the marks, the proximity of the goods and services, the similarity of the marks, and consumer sophistication. The U.S. Supreme Court declined to hear the International Information Systems case to determine the proper approach to assess nominative fair use. Therefore, marketers should exercise caution before using a third party's trademark.

KEY TAKEAWAYS

To help to demonstrate a nominative fair use, the third party's trademark should be depicted accurately and not altered or disparaged in any form.

Use of the word mark rather than the logo may help support a claim that the trademark was used in a limited manner.

The mark also should not be positioned prominently or highlighted in a manner suggesting an affiliation or sponsorship with the trademark owner.

A proper trademark notice (TM or ®), attribution or disclaimer also should be used under certain circumstances.

Advertising, Marketing & Promotions

Davis & Gilbert has been the preeminent law firm for all issues relating to the advertising and marketing communications industry for over a century. The firm's Advertising, Marketing & Promotions practice group is composed of over 30 attorneys who represent the world's leading advertising, marketing, digital, technology and media services companies, as well as many of the top global brand marketers.

We are at the forefront of changes sweeping the marketing and communications industry, and no law firm offers more in-depth experience in meeting all needs of advertisers and agencies, or has more attorneys dedicated to this work, than Davis & Gilbert.

To learn more about Davis & Gilbert's Advertising, Marketing & Promotions practice, visit us online at www.dglaw.com.

D&G | Davis & Gilbert LLP

Awards and Recognitions

Ranked in Band 1 for Advertising: Transactional & Regulatory by Chambers USA (2006-2016)

Top-tier ranked for Media, Technology and Telecoms: Marketing and Advertising by The Legal 500: United States (2007-2016)

Ranked in the first tier for Advertising Law (both nationally and for New York City) in the "Best Law Firms" rankings by U.S. News Media Group and Best Lawyers (2011-2017)

Named to the "Client Service A-Team" by The BTI Consulting Group (2012-2017)

Recognized as a leading firm for media law by Media Law International (2014-2016)

About Our Firm

Davis & Gilbert LLP is a strategically focused, full-service mid-sized law firm. Founded over a century ago and headquartered in New York City, the firm represents a wide array of clients – from advertising and marketing agencies of all types and sizes, and major brands and advertisers of products and services to media, technology, financial services and real estate companies, private individuals and non-profits.

Widely regarded as the #1 law firm for the marketing communications industry, Davis & Gilbert has practice groups in Advertising, Marketing & Promotions; Benefits & Compensation; Corporate; Digital Media, Technology & Privacy; Entertainment, Media & Sports; Insolvency, Creditors' Rights & Financial Products; Intellectual Property; Labor & Employment; Litigation; Private Client Services; Real Estate; and Taxation.

D&G | Davis & Gilbert LLP

Our Advertising, Marketing & Promotions Team


Ronald R. Urbach
Chairman, Co-Chair


Richard S. Eisert
Partner, Co-Chair


Ashima A. Dayal
Partner


Sara L. Edelman
Partner


Allison Fitzpatrick
Partner


Stuart Lee Friedel
Partner


James L. Johnston
Partner


Jeffrey C. Katz
Partner


Gary A. Kibel
Partner


Joseph Lewczak
Partner


Gerald B. Schwartz
Partner


Brooke Erdos Singer
Partner


Aaron Taylor
Partner


Howard R. Weingrad
Partner


Oriyan Gitig
Counsel


Joy J. Wildes
Counsel


Darren Fried
Senior Attorney


Kate Barry
Associate


Louis P. DiLorenzo
Associate


Rohini C. Gokhale
Associate


Josh J. Gordon
Associate


Devin A. Kothari
Associate

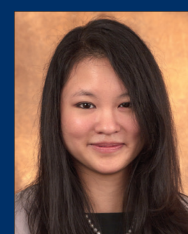

Paavana L. Kumar
Associate


Justin Lee
Associate


Samantha G. Rothaus
Associate


Truan Savage
Associate


Maxine Sharavsky
Associate


Vivian Wang
Associate

D&G | DAVIS & GILBERT LLP
ATTORNEYS AT LAW

Davis & Gilbert LLP 1740 Broadway, New York, NY 10019 212.468.4800 www.dglaw.com

©2017 Davis & Gilbert

Attorney Advertising