

## UNITED STATES



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<b>1. Topic:</b>	Communications Decency Act: Internet publishers immune from state tort liability
<b>When:</b>	April 2004
<b>Where:</b>	U.S. District Court for the District of Columbia
<b>What Happened:</b>	Woman sued publisher of an internet advertising guide for defamation and invasion of privacy as a result of the unauthorized use of her image in an advertisement for an escort company. The court held that per the Communications Decency Act, interactive computer services are immune from liability under state law arising from the publishing of content created or developed by third parties.
<b>Comments:</b>	This decision provides protection for internet companies from state tort liability who are engaged in publishing material created by third parties.

<b>2. Topic:</b>	Battle of the Beers in the low-carb market: Miller vs. Anheuser-Busch
<b>When:</b>	June 2004
<b>Where:</b>	U.S. District Court
<b>What Happened:</b>	Miller Brewing Co. sued Anheuser-Busch claiming that Anheuser Busch's ad describing Miller Lite as the "Queen of Carbs" is false and misleading. Despite Miller's concern that the ad falsely implies that Miller Lite beer contains more carbs than Bud Light, and that the term "queen" could be equated with the unflattering image of an effeminate man, Miller dropped its claim noting that its profits were not negatively affected by the ad campaign. In lieu of fighting the battle in the courts, Miller launched its own ad campaign making fun of Budweiser's elitist claim to being the "King of Beers."
<b>Comments:</b>	The fact that Miller's profits were not affected by the subject advertisement is evidence that <i>truthful</i> advertising is effective.

<b>3. Topic:</b>	General statements of policy do not establish a contract with consumers
<b>Who:</b>	Class Action Privacy Suit against Northwest Airlines
<b>When:</b>	June 2004
<b>Where:</b>	U.S. District Court for the District of Minnesota
<b>What Happened:</b>	Northwest Airlines complied with NASA's request to provide passenger information as part of an effort to increase airline security. The list contained the passengers' names, flight numbers, credit card data, etc. Passengers sued Northwest, alleging that the airline violated the Electronic Communications Privacy Act and the Fair Credit Reporting Act, and also included state claims for invasion of privacy and breach of contract. The airline's privacy policy posted on its web site, stated that "When you reserve or purchase travel services through Northwest Airlines nwa.com Reservations, we provide only

	the relevant information required by the car rental agency, or other involved third party to ensure the successful fulfillment of your travel arrangements.” The court concluded that a company’s policy does not create a unilateral contract. The court also explained that the policy was insufficiently definite to form a contract and that plaintiffs did not allege that they actually read the policy and, as such, there was no acceptance on the part of the passengers. The other claims were also dismissed for various reasons.
<b>Comments:</b>	The ruling may provide more legal protection for web site owners who merely post a general policy as such do not automatically become binding contracts.

<b>4. Topic:</b>	Public forum to report complaints about direct response advertising
<b>Who:</b>	Electronic Retailing Association (ERA) and National Advertising Review Council (NARC)
<b>When:</b>	August 2004
<b>Where:</b>	<a href="http://www.savvysopper.org">www.savvysopper.org</a>
<b>What Happened:</b>	Through their collaborative efforts, the ERA and NARC have launched a web site through which consumers can file complaints about infomercials and other direct response advertising. The site simply asks the consumer to fill out a questionnaire. The marketer is then notified of the complaint and given 15 days to provide pertinent information which is then reviewed and investigated by an independent attorney for the NARC. If the claims are found to be false, the marketer will be notified accordingly and given the opportunity to make recommended revisions. If the marketer does not comply, the matter is then referred to the FTC.
<b>Comments:</b>	This self-regulatory program will enhance the industry’s ability to monitor fraudulent advertisers and thus provide increased protection to consumers from false or misleading advertising.

<b>5. Topic:</b>	Mattel pays \$1.8 Million to Artist
<b>Who:</b>	Mattel vs. Tom Forsythe
<b>When:</b>	U.S. Federal District Court in LA
<b>Where:</b>	June 2004
<b>What Happened:</b>	Mr. Forsythe created a series of photographs called the “Food Chain Barbie” that depicted nude Barbie dolls in provocative positions. In 2001, Mattel sued Forsythe for copyright and trademark infringement, trade dress misappropriation and trademark/trade dress dilution. The court held that the work was a parody and thus Mr. Forsythe’s use of the Barbie doll in this context constituted fair use. Forsythe thereafter requested that Mattel be required to reimburse defense costs. In response, the court ordered Mattel to pay \$1.8 million in attorney’s fees and costs.
<b>Comments:</b>	You’ve heard the saying: choose your battles wisely! Like Mattel discovered, it may turn out to be very costly to vigorously protect your intellectual property as courts are hesitant to let such rights interfere with creative expression.

<b>6. Topic:</b>	Protecting children’s privacy
<b>Who:</b>	Legislature
<b>When:</b>	October 2004 (Bill introduced in July 2004)
<b>Where:</b>	Congress
<b>What Happened:</b>	Congress is currently considering federal legislation that would ban the purchase and sale of personal information for children under the age of 16 if the information is to be used for commercial marketing purposes, unless the parent gives express consent.
<b>Comments:</b>	If this bill is enacted, the means in which advertisers market their products and

	services will be restricted as information cannot be collected from children under 16, even if used to market to adults.
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<b>7. Topic:</b>	Bill Targeting Tobacco Labeling and Marketing
<b>Who:</b>	Senate
<b>When:</b>	July 2004
<b>Where:</b>	Congress
<b>What Happened:</b>	The Senate recently passed legislation that would permit the Food and Drug Administration to regulate tobacco products and marketing. Specifically, the bill requires tobacco companies to print their advertising in black text on a white background. The bill also creates new labeling and disclosure requirements, bans promotional items, insists on further funding of anti-tobacco advertising and requires compliance with strict state and local rules.
<b>Comments:</b>	Such content-based censorship, if passed, may pave the way for future legislation restricting the advertising of other “controversial” products and services.

<b>8. Topic:</b>	Guidelines for Food Advertising Targeting Children
<b>Who:</b>	National Advertising Review Council (NARC)
<b>When:</b>	May 2004
<b>Where:</b>	NARC/Self-regulatory body
<b>What Happened:</b>	The NARC issued guidelines (“Guidance for Food Advertising Self-Regulation”) regulating the advertising of food to children in response to the research that has been conducted on the effects of food, nutrition and weight loss advertising by the Children’s Advertising Review Unit (CARU) and the National Advertising Division. The voluntary guidelines include recommendations such as showing products in safe ways, not representing snack foods as substitutes for meals, etc. If CARU finds such ads “misleading, inaccurate or inconsistent with the guidelines,” it will make suggestions to the advertiser as to how the advertisement should be modified.
<b>Comments:</b>	These voluntary guidelines will help advertisers adhere to “acceptable” marketing practices and thus maintain a respectable reputation in this area without facing compulsory state or federal laws.