



15-SECOND

## ADVERTISING LAW ALERT

# INITIAL DECISION ON CDA IMMUNITY ISSUED IN SUBWAY CASE

After more than three years, we have a ruling in the *Subway* case on whether there is immunity as a matter of law for advertisers that allow arguably false viewer-generated claims on their websites.\*

### BACKGROUND

Subway and Quiznos compete in selling sandwiches. Quiznos launched a biting funny, expressly comparative advertising campaign in which it claimed that certain of its sandwiches had much more meat than certain Subway sandwiches.

The ads appeared on national television and the Internet. Subway alleged that all of them were false or misleading under the Lanham Act and state law. We focus here only on Internet claims generated by entrants in a Quiznos contest.

Quiznos offered prizes for winning videos that comparatively “illustrate[d] why Quiznos is better than Subway.” It posted on the site sample videos depicting Subway products as having no meat or less meat than Quiznos products. Entries

were publicized and the winner was shown on a Times Square billboard.

In moving for summary judgment, Quiznos argued that it had immunity from liability for the viewer-generated Internet claims. In this regard, it cited the Communications Decency Act, which provides that, “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”

### DECISION

The summary judgment motion was denied in all respects. As for CDA immunity, the court stated that the key issue was whether Quiznos exercised the role of a traditional publisher or was actively responsible for arguably false claims.

Rather than decide the issue as a matter of law, the court found that Quiznos’s responsibility was an issue of material fact: “A reasonable jury may well conclude that the Defendants ... actively solicited disparaging representations about Subway and thus were responsible for the creation or development of the offending contestant videos.”■

\* *Doctor’s Associates, Inc. v. QIP Holder LLC, et al.*, D. Conn. No. 3:06-cv-1710 (Feb. 19, 2010).

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