

POWERHOUSE POINTS

A Quarterly
Litigation Update

Fall 2021

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Federal Rule 30(b)(6) Now Requires Parties to “Confer in Good Faith” for Corporate Representative Deposition Topics Before or “Promptly After” Notice or Subpoena

Katlyn D. Krysan, Attorney

The year 2021 has brought about a lot of exciting change. We said goodbye to the year of widespread lockdowns in the wake of a global pandemic, we witnessed the inauguration of the 46th president of the United States, we cheered on our favorite athletes in the Summer Olympics, and—you guessed it—we ushered in an amendment to Federal Rule of Civil Procedure 30(b)(6).




Okay, perhaps the amendment to Rule 30(b)(6) is not all that exciting. But it is something that litigators and in-house counsel must keep in mind because it imposes new requirements on parties seeking to depose a corporation or other entity. At the end of 2020, Rule 30(b)(6) was amended to require that “[b]efore or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination.”¹ Additionally, “[a] subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify.”²

The Advisory Committee Notes share that the amendment is intended to “respond to problems that have emerged” with “overlong or ambiguously worded lists of matters for examination and inadequately prepared witnesses.”³ The Advisory Committee hopes that “[c]andid exchanges about the purposes of the deposition and the organization’s information structure may clarify and focus the matters for examination, and enable the organization to designate and to prepare an appropriate witness or witnesses, thereby avoiding later disagreements.”⁴

However, this “confer in good faith” requirement has less teeth than some commenters were hoping.⁵ An earlier draft of the proposed amendment included language requiring parties to confer in good faith not just on the “matters for examination,” but on both the “number and description of



Powerhouse Points

-  Rule 30(b)(6) was amended to avoid overly long and ambiguous areas of inquiry for corporate representative depositions and inadequately prepared deponents.
-  Serving parties and responding organizations now must “confer in good faith” about the matters for examination.
-  Counsel should take greater care to prepare their corporate representatives for deposition, as the amendment leaves little room to argue that the topics were not clear prior to deposition.

¹ Fed. R. Civ. P. 30(b)(6), effective December 1, 2020.

² *Id.*

³ Fed. R. Civ. P. 30(b)(6), 2020 amendment advisory committee’s note.

⁴ *Id.*

⁵ See, e.g., Tiffany Ward and Jessica Kennedy, A REVIEW OF THE 2020 AMENDMENT TO RULE 30(B)(6): A GUIDE FOR PRACTITIONERS ON HOW TO APPROACH THE NEW CORPORATE DEPOSITION PROCESS, Florida Bar Journal Vol. 95, No. 1 (2021) <https://www.floridabar.org/the-florida-bar-journal/a-review-of-the-2020-amendment-to-rule-30b6-a-guide-for-practitioners-on-how-to-approach-the-new-corporate-deposition-process/#u6dac>.

the matters for examination.”⁶ Removing reference to the “number and description” of matters for examination leaves the new meet and confer requirement vague as to what the parties are actually directed to confer about. It also leaves the amendment without reference to the “number” of matters for examination, which some hoped would encourage fewer areas of inquiry.

The Advisory Committee Notes acknowledge that parties may not be able to reach agreements and, in those cases, “it may be desirable to seek guidance from the court.”⁷ But the amendment to Rule 30(b)(6) contains neither a requirement that counsel certify that they conferred in good faith about the matters for examination, nor any guidance on how such issues should be addressed if the parties cannot resolve them on their own. With the Advisory Committee weighing in to try and resolve issues posed by Rule 30(b)(6) depositions, it seems like a missed opportunity to provide a formal way to resolve those disputes short of moving for a protective order.

Nonetheless, the amendment to Rule 30(b)(6) does require litigants to make some changes in their approaches to corporate representative depositions, and savvy practitioners will use those changes to their advantage.

First, the plain language of the amendment requires litigants to confer in good faith with the responding organization and advise non-party respondents of the requirements of Rule 30(b)(6). But the amendment allows the conference to occur before or after notice or service of a subpoena. If you are unfamiliar with the organization’s information structure, a conference before issuing a notice or subpoena may lead to more fruitful topics. On the other hand, practitioners may find that a conference after an initial notice or subpoena may lead to a more targeted conference to determine the proper areas of inquiry. Practitioners should consider the new requirement to confer and weigh those choices before issuing a deposition notice as usual.

⁶ Report of the Judicial Conference, Committee on Rules of Practice and Procedure, September 2019, https://www.uscourts.gov/sites/default/files/congressional_rules_package_2020_0.pdf.

⁷ Fed. R. Civ. P. 30(b)(6), 2020 amendment advisory committee’s note.

Second, counsel for responding organizations should take even greater care to prepare their corporate representatives for depositions in light of the amendment. The meet and confer requirement will cut against any future argument that the areas of inquiry noticed were too vague to allow for adequate witness preparation. Responding organizations should use the meet and confer requirement to fully understand the matters for examination so that the proper deponent can be selected and prepared.

Third, counsel should be sure to make a record of their conference, whether that is in the form of letters exchanged formally discussing the matters of examination (akin to Rule 201(k) correspondence for Illinois practitioners) or as follow-up confirmations after a meeting. Now that there is a requirement to confer in good faith, litigants should be prepared to demonstrate compliance in case of subsequent motion practice.

For some practitioners, the amendment to Rule 30(b)(6) will have no affect on their practice. After all, the amendment simply requires litigants to collaborate in good faith in advance of corporate representative depositions, and some may already consider this to be best practice.⁸ But even if your practice was to confer with deponent organization regardless, Rule 30(b)(6) does offer some new assistance by requiring that the responding entity participate “in good faith.” Though we all would like to hope that counsel would always act in good faith, codifying that expectation could make a huge difference if you have a difficult adversary across the table. ■

⁸ Katherine G. Vazquez, Meet and Confer Now Required for Rule 30(b)(6) Depositions, American Bar Association, (January 7, 2021) (available at <https://www.americanbar.org/groups/litigation/publications/litigation-news/top-stories/2021/meet-and-confer-now-required-for-rule-30b6-depositions/>).



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What to Know About Florida's Telephone Solicitation Act

Jeremy D. Richardson, Partner; and Robert A. Stines, Partner

On July 16, 2021, a Freeborn client (a manufacturer of vitamins and supplements) was sued in a purported class action lawsuit for violating the then 16-day-old Florida Telephone Solicitation Act¹ ("FTSA"). The lawsuit, filed in the Florida State Court for Miami-Dade County on behalf of a Florida resident,² alleged that Freeborn's client violated the FTSA because "Plaintiff never provided Defendant with express written consent authorizing Defendant to transmit telephonic sales calls to Plaintiff's cellular telephone number utilizing an automated system for the selection or dialing of telephone numbers."

Freeborn's client had sent text messages to thousands of Florida residents,³ so found to have violated the FTSA, the statutory damages would exceed \$1,000,000 plus attorneys' fees.

What to Know About Florida's Telephone Solicitation Act

Companies throughout the country that promote their brands by telephone calls and text message to Florida residents need to know about the FTSA, which became law on July 1, 2021. Allegedly the brainchild of two Florida plaintiffs' lawyers, the FTSA imposes strict "opt-in" requirements and heavy penalties for failure to obtain a Florida resident's consent. Since the law was enacted, several class action lawsuits have been filed against companies conducting telephonic sales calls (including by text message) to phone numbers with Florida area codes.

Here is an overview of the FTSA:

Any company making "telephonic sales calls" from anywhere in the U.S. to consumers located in Florida is subject to the FTSA. Calls to any phone with a Florida area code are presumed to be to Florida residents. Telephonic sales call means a telephone call, text message, or voicemail transmission. A company must obtain "prior express written consent" before it can "make" or "allow [to be made]" a telephonic sales call using an automated system for the selection or dialing of telephone numbers. Prior to enactment of the FTSA, companies could make calls without consent under certain circumstances, but those exceptions have been removed. Prior written consent that meets the technical requirements of the FTSA is the only defense to avoid liability under this law.



Similar to the federal Telephone Consumer Protection Act, the FTSA defines "Prior Written Consent" as a written agreement that:

1. Bears the signature of the called party;
2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;
3. Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered; and
4. Includes a clear and conspicuous disclosure informing the called party that:
 - a. By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called; and
 - b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

An electronic or digital signature is acceptable. This may include the called party responding to a text message as confirmation of written consent.

1 Fla. Stat. § 501.059.

2 Plaintiff, a resident of Bay County, Florida, had no apparent connection to Miami-Dade County, making plaintiff's choice of venue improper.

3 The FTSA presumes that a telephone number assigned a Florida area code belongs to a Florida resident.

Companies should be most concerned about the financial implications of the law because it allows consumers (or plaintiffs' attorneys) to bring a private right of action. A party who is aggrieved by a violation of the law can sue to recover actual damages or \$500, whichever is greater. If the court finds that the defendant willfully or knowingly violated the law, the court may increase the amount to \$1,500. The law allows the prevailing party to receive his or her reasonable attorney's fees and costs.

If accused of violating this law, companies should immediately consider their strategy to successfully defend against liability. Digital records, such as logs, text messages or other communications, that prove prior written consent, assuming proper consent was provided, should be identified, preserved and secured. Create a timeline of events that shows when the consumer first contacted the company, when consent was provided and when consent was withdrawn (if ever). Because of the prevalence of telemarketing through mobile phones and text messages, one should expect to preserve thousands of communications with Florida consumers. To efficiently handle the process, the company should assign in house personnel with sufficient technical skills or an outside vendor to gather this information. If possible, consider early discussions with the aggrieved consumer(s) or their attorney to avoid the expense of protracted litigation. Needless to say, retain an attorney who understands the law and litigating these types of claims.

Freeborn's Client Prevailed

Freeborn's client prevailed. We assembled evidence showing that our client obtained express written consent authorizing it to transmit telephonic sales calls to Plaintiff's cellular telephone number utilizing an automated system for the selection or dialing of telephone numbers. The "call to action" inviting the Plaintiff to opt-in included all the information and disclosures required by the FTSA. In fact, Freeborn's client obtained a "double opt-in" from the Plaintiff (after opting in and provided a cell phone number, our clients sent a text message asking the Plaintiff to "Reply 'Y' to opt-in" and a link to terms and conditions, providing an additional layer of express consent.

Even before formal discovery commenced, we provided this evidence to Plaintiff's counsel, who withdrew the lawsuit a day before the initial court conference. ■



Jeremy Richardson leads the firm's Consumer Products Industry Team, is a Partner in the Litigation Practice Group, and a member of the Intellectual Property Practice Group. Jeremy works primarily with consumer product manufacturers and, in particular, the juvenile products industry.



Robert Stines is a Partner in the Litigation Practice Group and a member of the Emerging Industries Team. In representing professionals and SMBs, Rob litigates matters that affect companies interacting through the Internet and digital platforms such as cybersecurity, privacy, cyber-insurance, and e-discovery.

Anti-Sexual Harassment Training Required for All Illinois Employers by December 31, 2021

All Illinois employers must provide anti-sexual harassment training to their Illinois employees annually, with this year's training to be completed by December 31, 2021.

There continues to be no relaxation of this requirement under the COVID-19 pandemic.

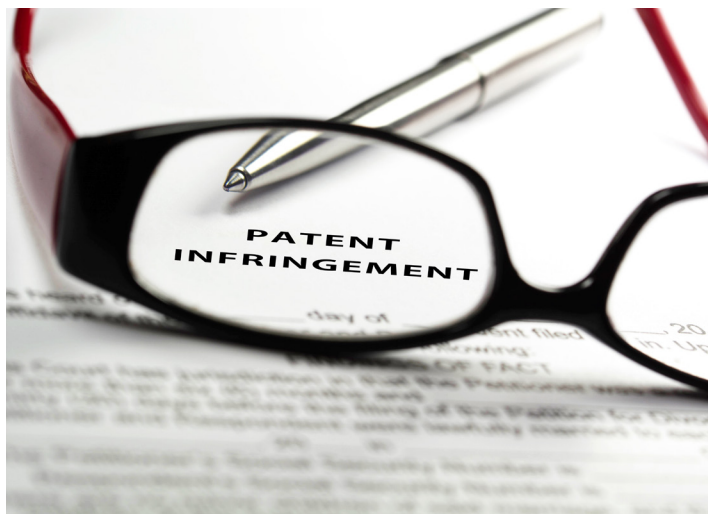
Freeborn's Labor and Employment team is available to provide virtual anti-sexual harassment trainings. Training will be conducted over Zoom or other virtual platforms, and in most instances will be divided into management and non-management sessions.

Each training will be tailored to your company and its policies, and trainings can also be modified to meet other states' requirements.

To learn more and book your training, contact: Steve Hartmann at shartmann@freeborn.com.

Patent Infringement, Antitrust and the Discovery Rule

Jeffery M. Cross, Partner






On September 20, 2021, Judge John Robert Blakey in the Northern District of Illinois issued an opinion in a *Walker Process* patent fraud antitrust case denying defendants' motion for summary judgment on their statute of limitations defense. *TCS John Huxley America, Inc. v. Scientific Games Corp.*, No. 1:19-cv-1846, 2021 WL 4264403 (N.D. Ill. Sept. 20, 2021). The opinion established important principles regarding application of the statute of limitations "discovery rule" in a *Walker Process* antitrust case. Freeborn & Peters was one of the firms representing the plaintiffs.

The plaintiffs had sued Scientific Games Corp. alleging a violation of Section 2 of the Sherman Act. The complaint alleged that Scientific Games, through its acquired entity, SHFL Entertainment, brought patent infringement litigation in 2009 and 2012 based on fraudulently obtained patents for automatic card shufflers used in licensed casinos.

In an earlier similar case, both Scientific Games and SHFL had been sued in federal district court in Chicago by Shuffle Tech International, also alleging antitrust violations for bringing an infringement action based on fraudulently obtained patents. That case went to trial in the summer of 2018 before a jury, which returned a verdict for Shuffle Tech in the amount of \$105 million. Under the antitrust laws, this jury award was automatically tripled by the trial court to \$315 million. Shuffle Tech was also entitled to its attorneys' fees and costs. The case ultimately settled for \$151 million. Freeborn & Peters had also been part of the team representing the plaintiffs in the earlier case.

Powerhouse Points

-  Under the discovery rule, the statute of limitations is triggered only when the plaintiff knows it has been injured and by whom, or through due diligence should have discovered its injury.
-  A patent infringement suit is not necessarily antitrust injury. The Noerr-Pennington doctrine provides immunity from antitrust claims to the patent holder.
-  Only intentional fraud on the patent office strips the patent holder of immunity from antitrust claims.

Having seen this verdict, which was the tenth largest federal jury verdict in the United States in 2018, plaintiffs TCS John Huxley and Taiwan Fulgent reached out to patent counsel on the Shuffle Tech case, meeting with them on March 8, 2019. The antitrust case was filed shortly thereafter on March 15, 2019.

The defendants in *TCS John Huxley* moved to dismiss on the grounds that the case was barred, in part, by the statute of limitations. The court denied the motion to dismiss in March 2020, but bifurcated discovery on the statute of limitations from discovery on the merits. After plaintiffs produced over 750,000 pages of documents and defendants took seven depositions, defendants moved for summary judgment.

The statute of limitations for a complaint brought under Section 2 of the Sherman Act is four years from the time of injury. 15 U.S.C. § 15(b). But in the Seventh Circuit, the time that the statute of limitations for antitrust cases begins to run is tempered by the so-called discovery rule. There are two prongs to the discovery rule: knowledge of the injury or whether the plaintiff should have discovered the injury in the exercise of due diligence. Under the first prong, accrual occurs "when the plaintiff discovers that 'he has been injured and who caused the injury.'" *In re Copper Antitrust Litigation*, 436 F.3d 782, 789 (7th Cir. 2000) (quoting *Barry Aviation, Inc. v. Land O'Lakes Municipal Airport Commission*, 377 F.3d 682, 688 (7th Cir. 2004)); see also *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450 (7th Cir. 1990).

Judge Blakey noted in his opinion denying defendants' motion to dismiss that defendants had argued that the statute of limitations began to accrue when SHFL sued plaintiffs in 2009 and 2012. See *TCS John Huxley America, Inc. v. Scientific Games Corp.*, No. 1:19-cv-1848, 2020 WL 1678258 **4-7 (N.D. Ill. March 20, 2020). But the court noted that a patent infringement case is different. Although a patent infringement case causes an anticompetitive injury in that it excludes the plaintiff from the market, it does not cause "antitrust injury." *Id.* at 4. Such exclusion by a patent infringement action is permitted by law. Such an infringement action is immune from antitrust liability under the Noerr-Pennington doctrine which upholds the right of a party to petition the government, including the courts. See, generally *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers of America v. Pennington*, 381 U.S. 657 (1969). Judge Blakey noted that the assertion of patent rights "implicates the antitrust laws only if the patent holder knows the patent is invalid and otherwise unenforceable and nonetheless uses it to gain or maintain a monopoly." 2020 WL 1678258at *4. The court held that, for a *Walker Process* patent fraud antitrust case, the "antitrust injury stemming from a *Walker Process* claim occurs . . . only if the alleged infringer knows (or has reason to know) the asserted patents were procured by fraud or otherwise invalid and unenforceable" *Id.*

In denying summary judgment, Judge Blakey went further to focus on the Supreme Court's requirement to strip away antitrust immunity for a patent holder bringing an infringement case. In *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172 (1969), the Supreme Court noted that immunity from antitrust liability for a party bringing a patent infringement claim could be stripped away only if the patentee intentionally defrauded the patent office to obtain the patent. Justice Harlan in a concurring opinion elaborated on this requirement. He noted that the requirement that there be intentional fraud on the patent office was necessary to balance the different policies of the patent laws and the antitrust laws. He concluded that, if any erstwhile infringer were allowed to bring an antitrust claim for some other challenge to the patent, such as obviousness or what he described as "technical" fraud, such an action would "impinge" on the policy of the patent laws to encourage invention and the disclosure of that invention required by the patent laws. Only by requiring a finding of intentional fraud on the patent office to strip away the immunity would the conflicting principles of the patent laws and the antitrust laws be accommodated. *Id.* at 179-80 (Harlan J. concurring).

Judge Blakey acknowledged this requirement in denying defendants' motion for summary judgment. His key legal finding in his opinion was as follows:

A patent infringement suit is not necessarily an antitrust injury. In fact, the Noerr-Pennington doctrine provides immunity from antitrust claims to patent holders. *Nobelpharma AB v. Implant Innovations, Inc.*, 141 F.3d 1059, 1067-68 (Fed. Cir. 1998). To overcome such immunity, a plaintiff must show the patent holder obtained the patent through intentional fraud or brought the case in bad faith, with knowledge that the asserted patent was invalid, unenforceable, or not infringed. See *Professional Real Estate Inv'rs, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49 (1993); *Walker Process Equip., Inc. v. Food Mach. & Chem. Corp.*, 382 U.S. 172 (1965). Thus, to know they had suffered an antitrust injury, Plaintiffs needed to know, or have reason to know, Defendants had intentionally engaged in fraud to obtain the asserted patent or brought sham litigation to keep TF from competing in the market.

2021 WL 4264403 at *3 (emphasis in original).

Undertaking a thorough review of the evidence adduced by the defendants during bifurcated discovery, Judge Blakey concluded that "the record [did] not allow the Court to definitively rule that Plaintiffs knew they had suffered an antitrust injury before [the start of the four-year statute of limitations period]." 2021 WL 4264403 at *5. ■



Jeff Cross is a Partner in the Litigation Practice Group and a member of the Antitrust and Complex Litigation Team. Jeff has over 40 years of trial experience representing a variety of corporations and businesses throughout the country on antitrust, securities fraud, contract, real estate, environmental regulations, libel and slander, false advertising, commercial code and trade regulation issues.

New Enforcement and New Rules for Made in USA Claims

Kimberly A. Beis, Partner






Last year, we talked about the proposed FTC rule regarding “Made in USA” claims. On July 1, 2021, FTC finalized its proposed “Made in USA” Rule, in an effort to “crack down” on false and unqualified claims by companies that their products are Made in the USA. The rule was published on July 14, 2021 in the Federal Register and became effective on August 13, 2021. Some big questions arise – what do we expect the Rule will cover, will FTC increase enforcement of Made in USA claims; will the rule serve as a deterrent, and how will it affect businesses and how they label and/or advertise their products?

FTC has noted that the goal of codifying the Made in USA Rule is to increase deterrence of “Made in USA” fraud as well as to clarify (and codify) some of the standards relating to “Made in USA” claims. FTC had a number of options regarding the standard for determining how a product qualifies as “Made in USA.” Those included: (1) a percentage-of-costs standard; (2) allowances made for imported parts or materials not available in the United States; (3) “substantial transformation” test standard (like that used by Customs and Border Patrol); as well as (4) a safe harbor for “good faith” efforts to comply. However, FTC stuck with “all or virtually all” which prohibits unqualified “Made in USA” claims on labels unless (1) final assembly or processing of the product occurs in the United States; (2) all significant processing occurs in the United States; and (3) all or virtually all ingredients or components of the product are made and sourced in the United States.

One of the concerns discussed during the comment period regarding the proposed Rule, was the apparent broadening of the rule to go beyond labeling. The final Rule included the proposed language making it applicable to “any mail order catalog or mail order promotional material.” “Mail order catalog and mail order promotional materials” are defined as “any materials, used in the direct sale or direct offering for sale

Powerhouse Points

-  Final Rule increases enforcement options for FTC (including civil penalties).
-  The Final Rule covers more than just “labels.”
-  USDA to launch similar “Made in USA” initiative.

of any product or service, that are disseminated in print or by electronic means, and that solicit the purchase of such product or service by mail, telephone, electronic mail, or some other method without examining the actual product purchased.” 16 C.F.R. section 323.1(b). The extension of this could be significant – and FTC has noted the Rule will apply beyond physical labels. FTC Chair Lina Khan, who assumed her role as Chair of FTC on June 12, 2021, explained that “the definition of label does extend beyond labels physically affixed to a product. As described in the rule, other depictions of labels are also covered; in some circumstances, labels appearing online may also be subject to the rule. The Commission declines to cover advertising more broadly, as this is inconsistent with the authority granted by Congress.” 86 Fed. Reg. at 37033. The declination to cover “advertising” more generally is somewhat helpful in determining the scope and reach of the Rule, but the new Rule definitely opens the door to additional enforcement, which could create and/or increase risks for many businesses.

Part of the increased risk with the Rule includes the threat of civil penalties (as well as injunctive and other damages). With civil penalties of up to \$43,280 *per violation*, FTC’s power to deal with unqualified Made in USA claims truly has some teeth. While there have been (and continue to be) significant monetary settlements with FTC¹, the ability to assess specific civil penalties for violations gives FTC additional tools to combat fraud in Made in USA claims, which FTC states as their goal.

¹ In February 2021, FTC and glue maker Chemence, Inc, agreed to settle a lawsuit filed by FTC against Chemence, Inc. for supplying multiple types of glues in packages labeled with deceptive unqualified “Made in USA” claims, some including an image of the American flag. The settlement is the highest ever recorded for a Made in USA case at \$1.2 million. See FTC Approves Final Order Stopping the Manufacturer of Superglues, and Company President, from Marketing Products with Misleading ‘Made in USA’ Claims, Federal Trade Commission, (last visited October 20, 2021 2:32 PM) <https://www.ftc.gov/news-events/press-releases/2021/02/ftc-approves-final-order-stopping-manufacturer-super-glues-company>.

An interesting result from the proposed (now final) Rule and the comment period, is the response of the USDA. A significant number of comments to FTC in response to the proposed rule, were from shrimpers, ranchers and others who are concerned about how food is labeled, as it relates to country of origin, and the requirements and allowances surrounding those labels. USDA listened and, in addition to commending FTC on the finalization of the Made in USA Rule, promised to implement similar initiatives at USDA for the labeling of products regulated by FSIS. Specifically, the USDA secretary noted USDA is “committed to ensuring that the Product of USA label reflects what a plain understanding of those terms means to U.S. consumers.”²

² [USDA Announces Efforts to Promote Transparency in Product of the USA Labeling, U.S. Department of Agriculture, \(last visited 10/20/2021 2:36 PM\) https://www.usda.gov/media/press-releases/2021/07/01/usda-announces-efforts-promote-transparency-product-usa-labeling.](https://www.usda.gov/media/press-releases/2021/07/01/usda-announces-efforts-promote-transparency-product-usa-labeling)

As we look forward at Made in USA claims for consumer goods regulated by FTC, it remains to be seen what enforcement will look like – but if it is anything like the most recent settlement,³ businesses should be aware that FTC is serious about Made in USA claims and compliance with FTC orders. Made in USA is clearly an important issue for FTC and this new Rule gives it more power to ensure consumers can trust a company claiming its products are “Made in USA.” ■

³ The most recently published settlement (with colorful and passionate concurring and dissenting opinions) was for violations of a 2018 consent order with FTC as well as continued violations, but did not fall under the new Rule. The monetary settlement amount was \$753,000 for consumer redress, and the company was prohibited from making unsupported or unqualified U.S.-origin claims, and must clearly disclose foreign components or processing of its products when making qualified U.S.-origin claims. See *Nectar Brand LLC Agrees to Settle FTC Charges that Company’s Claims about Chinese-Made Mattresses Being ‘Assembled in USA’ Are False*, Federal Trade Commission, (last visited October 20, 2021 2:43 PM) <https://www.ftc.gov/news-events/press-releases/2018/03/nectar-brand-llc-agrees-settle-ftc-charges-companys-claims-about-ftc-orders-made-in-usa-repeat-offender-to-pay-funds>; *FTC Orders “Made in USA” Repeat Offender to Pay Funds*, Federal Trade Commission, (last visited October 20, 2021 2:45 PM) <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-orders-made-usa-repeat-offender-pay-funds>



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Meet the Newest Litigation Practice Group Members



Jade L. Turner, Tampa

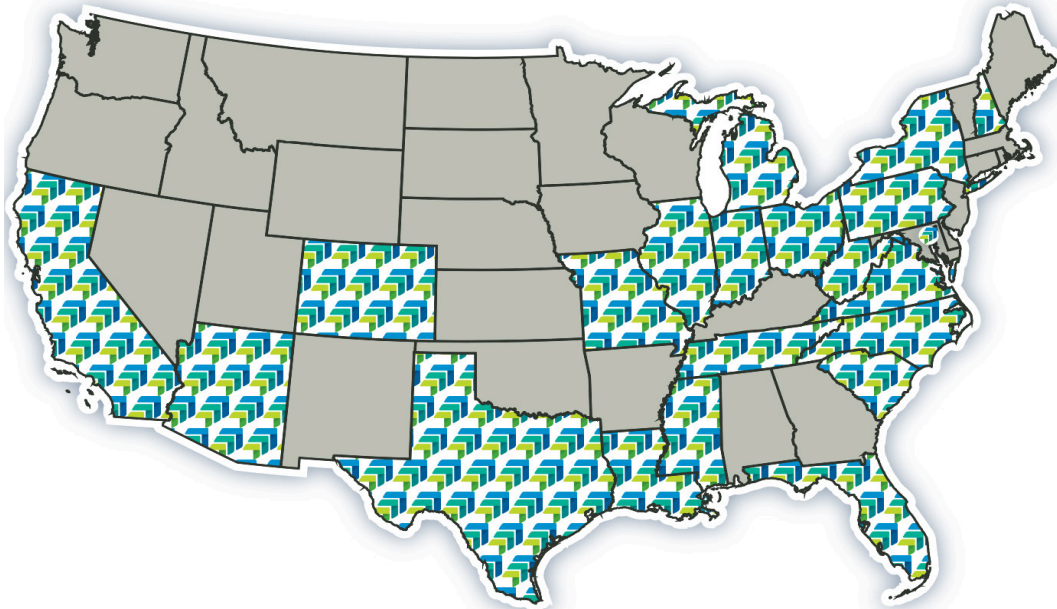
Jade is an Associate in the Litigation Practice Group and a member of the Insurance/ Reinsurance Industry Team, with a focus on trust, probate and fiduciary litigation. Jade has experience litigating complex estate planning disputes, as well as commercial and business litigation and securities matters.










Aishwarya Totad, Chicago

Aishwarya is an Associate in the Litigation Practice Group and a member of the Intellectual Property Team. A recent graduate of the University of Connecticut School of Law, she has a background in engineering and judicial policy. Before receiving her Master’s and law degrees, she worked as a software engineer.

RECENT LITIGATION BY STATE



HIGHLIGHTED WINS

-  A team of Freeborn attorneys, in partnership with the National Immigrant Justice Center, prevailed on behalf of a pro bono client in an asylum trial against the government's robust efforts to deport our client back to Cameroon. The client fled Cameroon after the military arrested and tortured her because of her political identity, and for participating in a peaceful protest against the marginalization and unjust treatment of Southern Cameroon. Even after she fled, the military continues to search for and threaten her, so she cannot return for fear she will be imprisoned or murdered. The client was recently granted protection in the U.S.
-  Secured summary judgment on behalf of closely held corporation in contentious breach of fiduciary duty claim.
-  Obtained reversal of an unfavorable decision on appeal, resulting in case going back to trial court for decision on trial regarding avoidance of fraudulent transfers under Pennsylvania state law.
-  Successfully prevailed on motion to dismiss a breach of contract claim with prejudice on behalf of client North Carolina company. Plaintiff claimed that under its business brokerage agreement, it was entitled to a commission when defendant client completed an internal company restructuring. The court found that while the transaction at issue may have qualified as a commission triggering transaction, plaintiff's claim was defeated by defendant's evidence and dismissal was warranted with prejudice because plaintiff failed to comply with Supreme Court Rule 191(b). Plaintiff's motion to reconsider was denied. (*Circuit Court of Cook County, Illinois*)
-  Successfully dismissed 7-count complaint containing claims of breach of fiduciary duty, conspiracy, and violations of the Illinois Securities law, as well as defeated a motion for reconsideration of the dismissed claims, in a lawsuit involving members of a local start-up company. (*Circuit Court of Cook County*)
-  Successfully handled two related legal malpractice cases involving both trustee and receiver issues which were vigorously litigated by plaintiff for almost three years. Plaintiff claimed the amounts in controversy were above seven figures, but on the eve of the first trial, the plaintiffs voluntarily dismissed both cases with prejudice, with our client paying nothing. (*Florida Circuit Court*)
-  Obtained emergency preliminary injunction and temporary restraining order on behalf of client, Paragon Insurance Holdings, LLC, enjoining Allied World Insurance Company from its attempt to both terminate a Program Management Agreement with Paragon and take Paragon's protected trade secret client and customer renewal information impacting the insurance placements of over 950 wineries and breweries across the country insured under a nationwide specialty insurance program. *Paragon Insurance Holdings LLC v. Allied World Insurance Company*, No. 19 cv 7238 (S.D.N.Y. 2019).

ABOUT FREEBORN'S LITIGATION POWERHOUSE®

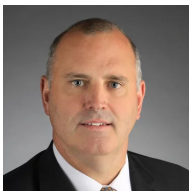
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