

## Advertising Alert

January 19, 2012

### Advertising News & Analysis - January 19, 2012

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##### **SUPREME COURT RULES FEDERAL COURTS CAN HEAR TCPA CASES**

On Wednesday, the U.S. Supreme Court unanimously ruled that a lawsuit filed alleging violations of the Telephone Consumer Protection Act ("TCPA") could be heard in Federal court. The decision overturns rulings by the U.S. District Court for the Southern District of Florida and the 11th Circuit, which held that TCPA cases should be tried exclusively in state courts. The ruling also goes against similar rulings in the Second, Third, Fourth and Ninth Circuits.

TCPA cases traditionally have been tried in state courts because the language of the Act calls for cases brought under the law to be tried in an appropriate state court if bringing such an action is otherwise permitted under that state's laws. Interestingly, the Mims case is not a class action, as is frequently the case with TCPA suits. It is, at best, unclear what effect of the Supreme Court's decision will have on the filing of future TCPA class actions.

"Beyond doubt, the TCPA is a federal law that both creates the claim [the plaintiff] has brought and supplies the substantive rules that will govern the case," Justice Ruth Bader Ginsburg wrote in the Supreme Court's decision. "We find no convincing reason to read into the TCPA's permissive grant of jurisdiction to state courts any barrier to the U.S. district courts' exercise of the general federal-question jurisdiction they have possessed since 1875."

The case will now return to the 11th Circuit.

[Go here](#) to read *Courthouse News Service's* coverage of the decision.

[Go here](#) to read the Court's decision.

##### **FTC CRACKS DOWN ON GOLD, CREDIT MARKETERS FOR TSR VIOLATIONS**

On Wednesday, the Federal Trade Commission ("FTC") announced a pair of enforcement actions and asset freezes relating to alleged violations of the Telemarketing Sales Rule ("TSR").

In the first action, the FTC alleged violations of the FTC Act and TSR by American Precious Metals and its principals. The FTC alleged that the company "tricked" consumers into buying high-fee, high-risk investments on credit by misrepresenting or not disclosing material information such as the risk of the investment, total fees, interest on credit purchases, and the possibility those consumers may face margin calls.

In the other action, the FTC alleged that Premier Nationwide Corporation and its principal violated the FTC Act and the TSR by offering, for an upfront fee, to consolidate consumers' debts on a low-interest credit card or help lower the rate consumers were currently paying on an existing account. The company also offered a money-back guarantee, minus a 20 percent processing fee. In reality, the FTC alleged in its complaint, Premier Nationwide did little to help consumers who paid its fee, often caused those consumers to incur additional fees, and frequently refused to issue refunds when they were requested.

Under changes made to the TSR in 2010, companies who market debt relief services over the telephone are prohibited from charging a fee until they have achieved the promised result.

[Go here](#) to read the FTC's press release and complaint in the American Precious Metals case.

[Go here](#) to read the FTC's press release and complaint in the Premier Nationwide case.

##### **COMSCORE CLAIMS 31% OF ONLINE ADS NOT "IN-VIEW"**

This week, digital business analytics company ComScore announced that it has developed software that purports to provide an analysis of which of a marketer's ads in an online campaign are visible to

consumers.

According to an *Ad Age* story about the product, ComScore tested the software over the past two months during online campaigns for leading brands such as Kraft, Ford, and Sprint. The test found that 31% of the 1.7 billion ad impressions served were never visible to consumers. In addition, ComScore found that some ads in 72% of the campaigns ran along content that it deemed was not "brand safe."

**Go here** to read *Ad Age's* coverage of the ComScore announcement.

### **MELISSA LANDAU STEINMAN TO CHAIR PMA LAW CONFERENCE**

**Melissa Landau Steinman**, a partner in Venable's Advertising and Marketing practice and a board member of the Promotion Marketing Association ("PMA") has been selected to chair the 2012 PMA Law Conference. Each fall, the PMA law conference brings together leading in-house and private practice attorneys with senior marketers and regulatory officials to discuss the legal aspects of emerging marketing practices. This year, the conference will take place November 13-14 in Chicago. For more information about PMA, please visit [www.pmalink.org](http://www.pmalink.org).

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### Upcoming Events

#### **The 8th Annual Anti-Counterfeiting & Brand Protection Summit – San Francisco**

January 23-24, 2012

Join partners, **Marcella Ballard** and **Justin Pierce** as they participate in panel discussions on policies and strategies to protect against counterfeiting, piracy, parallel importing and product diversion. **Justin Pierce** will speak on the panel titled: "Quantifying the Potential Impact of Counterfeiting on Your Brand and Your Bottom Line" on January 24 at 9:00 a.m. (PST). **Marcella Ballard** will speak on a panel titled "What Steps Can Brand Owners Take to Counter the Ease of Distribution, Communication and Anonymity the Internet Affords?" on January 25 at 11:15 a.m. (PST).

#### **ACI's Advertising Law Conference – New York**

January 23-24, 2012

Venable is a proud sponsor of this conference, join us for a presentation by **Roger A. Colaizzi** titled "Battle of the Brands: Resolving Disputes Involving Competitor's Comparative Claims."

#### **ACI's Consumer Finance Class Actions & Litigation – New York**

January 26-27, 2012

Venable is a proud sponsor of this conference, join us for a presentation by **Thomas E. Gilbertsen** titled "Dodd-Frank & the CFPB: A Look into Today's Most Important Issues, the Status of the Bureau and Which Regulations Will Most Impact Consumer Finance Institutions & Litigators in the Next Year."

#### **Marcus Evans Legal Risks in Emerging Technologies – Alexandria, VA**

January 26-27, 2012

Venable is a proud sponsor of this event, join us for a presentation by **Melissa Landau Steinman** titled "Effectively Using New Promotional Techniques on Social Media and Mobile Applications Without Violating the Law."

#### **Understanding the Legal Issues in Social Networking, LIVE Webcast for The Knowledge Congress**

February 8, 2012

Venable is a proud sponsor of this event, join us for a presentation by **Melissa Landau Steinman** on the legal issues companies face related to social networking, and learn strategies to address the legal implications, mitigate risks and make the most of social networking efforts.

#### **ERA Great Ideas Summit – Miami**

February 27-29, 2012

Venable is a proud sponsor of this event, visit us at our Exhibit Booth (no. 105).

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