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202.344.4383**Honors and Awards**Winner of the 2010 and 2011  
Chambers USA Award for  
Excellence**News****Senator Durbin Calls on FDA to Regulate Caffeine in Energy Drinks**

This week, Senator Dick Durbin (D-Ill.) called on the Food and Drug Administration ("FDA") to regulate energy drinks, which, according to Durbin, may contain more caffeine than young consumers can handle.

According to the "Floor Action Blog," Durbin's letter to FDA Commissioner Margaret Hamburg is a reaction to the December death of a 14-year-old girl who suffered a cardiac arrhythmia. Durbin's office maintained that the death was due to "caffeine toxicity after drinking two 24-ounce Monster energy drinks in a 24-hour period."

Durbin's letter points out that the FDA has authority to regulate caffeine levels in soft drinks, and can regulate additives in beverages to make sure they are safe. The letter also asks the FDA to clarify whether energy drinks should be regulated as beverages, rather than as dietary supplements. When the products are marketed as dietary supplements, they are subject to less stringent regulations.

**FTC Approves Final Order Settling Privacy Charges with Upromise**

Following the public comment period, the Federal Trade Commission ("FTC") this week approved a final order settling charges that Upromise, Inc., a membership reward service aimed at consumers trying to save money for college, used a web browser toolbar to collect consumers' personal information without adequately disclosing the extent of the information it was collecting.

Under the settlement, Upromise must clearly disclose its data collection practices and obtain consumers' consent before installing or re-enabling any such toolbar products. The company must also notify consumers how to disable the data collection tool on their computers, and it is prohibited from making misrepresentations about how the company maintains the privacy and security of consumers' personal information. Upromise must also establish a comprehensive information security program and obtain biennial independent security assessments for the next 20 years.

[Click here](#) to read the FTC's press release about the Final Order.

**FTC Continues Crackdown on Marketers Targeting Vulnerable Consumers**

This week, the FTC announced four enforcement actions against marketers targeting consumers in financial distress through a number of channels. These actions are the latest in a string of enforcement actions against so-called "last dollar" scams. The actions announced this week involved a company purporting to prevent automotive repossessions by modifying car loans, a telemarketing scheme that targeted timeshare owners attempting to sell their properties, a robocalling operation promising non-existent government grants, and a payday lender that allegedly added excessive fees to loans and made illegal threats during debt collection.

The payday lender targeted in the enforcement action has, in the past, claimed that it is affiliated with Native American tribes, and therefore immune from legal action by state consumer protection authorities. In its complaint, the FTC maintains that such an affiliation does not provide immunity from federal enforcement.

[Click here](#) to read the FTC's press release about the timeshare enforcement action.



Law Firm of the Year, National Advertising, *U.S. News and World Report*, 2011



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[Click here](#) to read the FTC's press release about the car loan enforcement action.

[Click here](#) to read the FTC's press release about the grant robocalling enforcement action.

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## Analysis

### Court Denies Class Action in Continuity Product Case

"In the never-ending war between marketers and class- actions lawyers, it is always nice to hear about a victory for a marketer," writes Venable partner [Gregory J. Sater](#) in a recent column published in the "DRMA Voice."

Sater's column details the ruling by the U.S. Court of Appeals for the Third Circuit in favor of Synapse Group Inc., which affirmed a lower court's denial of class certification. "Most cases," Sater writes, "are so expensive to litigate that they must be settled if the putative class is certified." This makes denial of certification a must-win for marketers defending class actions.

[Click here](#) to read Sater's column.

### CFPB now Sharing Complaints with FTC

"The Consumer Financial Protection Bureau ("CFPB") recently announced it has started sharing its complaints with the Federal Trade Commission's Consumer Sentinel database and other state and federal agencies," writes Venable attorney [Jonathan L. Pompan](#) in a recent post on Venable's advertising law blog [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

"Consumer Sentinel is an online database of consumer complaints maintained by the FTC that helps law enforcement track and respond to consumer complaints. The database is accessible only to law enforcement."

According to a CFPB statement on its website, "[the] goal in sharing complaints with the FTC is to remove artificial barriers that stand in the way of efficient, transparent, and effective governance. By removing these barriers, we are encouraging agencies to work together to better protect American consumers. We are excited about our collaboration with the FTC, and we look forward to maintaining a close and fruitful partnership."

[Click here](#) to read the CFPB's announcement.

[Click here](#) to learn more about the FTC's Sentinel program.

[Click here](#) to read Pompan's post on Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com). The post is the second post on this page.

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## Events

### Toxics Regulation for Retailers and Consumer Products Manufacturers - Los Angeles

April 24, 2012

Please join Venable partner [Randal M. Shaheen](#) when he presents "[Setting up an Effective Sustainability Marketing Program and Avoiding Greenwashing Claims.](#)" Shaheen will provide an update on recent regulations, case law, regulatory initiatives, compliance and marketing issues to assist attorneys, corporate management, risk managers, insurance professionals and governmental representatives. The presentation starts at 1:15 (PDT) and will take place at the Radisson Hotel at Los Angeles Airport.

### FDLI 55th Annual Conference - Washington, D.C.

April 24-25, 2012

Venable partner [Ralph S. Tyler](#) will participate on a Roundtable of Former FDA Chief Counsels and [Ilene R. Heller](#) will join a panel on "Functional Foods: How Foods, Dietary Supplements and Pharmaceuticals Are Becoming Increasingly Intertwined."

### ERA'S Government Affairs Fly-In 2012 - Washington DC

May 7-9, 2012

Please join Venable at the Electronic Retailing Association's 2012 Government Affairs Fly-In. The event, which takes place in Washington, DC from May 7-9, is an outstanding opportunity to learn more about the regulatory and legislative efforts affecting the electronic retailing industry and to meet with lawmakers and senior agency officials. Venable's **Jeffrey D. Knowles** will be among the dozen senior-level speakers from Capitol Hill, federal regulators, industry self-regulatory bodies, policy think tanks and the electronic retailing industry during this important two-day event.

#### **Response Expo 2012 - San Diego CA**

May 15-17, 2012

Please join Venable at the Response Expo 2012. The event, which takes place in San Diego, CA from May 15-17, brings together key decisionmakers and industry leaders from the corporate marketing arena and direct response spectrum. Please stop by our booth and meet Venable's **Advertising and Marketing** attorneys. Venable is the proud sponsor of the Martini Party networking event, which will occur on May 16 from 4:30 - 6:00 pm.

#### **ACI Litigating & Resolving Advertising Disputes - New York**

June 19-20, 2012

Venable is a proud sponsor of the ACI Litigation & Resolving Advertising Disputes Conference. Please join Venable's **Thomas E. Gilbertsen** and **Amy Ralph Mudge**. Gilbertsen will speak on the explosion of class action lawsuits and Mudge will moderate a panel of judges providing the judicial perspective on advertising litigation.

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Visit Venable's advertising law blog at [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

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