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Issue Editors

Jeffrey D. Knowles
jdknowles@Venable.com
202.344.4860

Roger A. Colaizzi
racolaizzi@Venable.com
202.344.8051

Gary D. Hailey
gdhailey@Venable.com
202.344.4997

Gregory J. Sater
gjsater@Venable.com
310.229.0377

In This Issue

Jeffrey D. Knowles
jdknowles@Venable.com
202.344.4860

Leonard L. Gordon
lgordon@Venable.com
212.370.6252

Stuart P. Ingis
singis@Venable.com
202.344.4613

Randal M. Shaheen
rmshaheen@Venable.com
202.344.4488

Ian D. Volner
idvolner@Venable.com
202.344.4814

Mikhia E. Hawkins
mhawkins@Venable.com
202.344.4573

Honors and Awards

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See the Sessions at ERA D2C That You Can't Afford to Skip!

Venable is proud to sponsor the Electronic Retailing Association's D2C Convention in Las Vegas. Please join our Venable attorneys as they present educational sessions at ERA D2C.

Recently, marketers and the FTC have waged pitched legal battles, often resulting in multi-million-dollar payouts. Join Venable partner **Jeffrey D. Knowles** to learn how and why aggressive enforcement is affecting marketers and suppliers during the "Driving Change in Electronic Retailing: Government Enforcement and Self-Regulation" panel on Tuesday, September 11 from 10:30 a.m. to 11:30 a.m. PDT.

Join Venable partner **Gregory J. Sater** to learn how to grow your brand via social media while mitigating legal and reputational risk. He will moderate a panel entitled "Riding the Social Media Roller Coaster" on Tuesday, September 11 from 1:30 p.m. to 2:30 p.m. PDT.

To obtain a complimentary exhibit-hall pass that will allow you to attend the expo as a guest of Venable, please [click here](#) and register using the code **VBND3607**.

If you are attending ERA D2C and are interested in scheduling a conversation with a Venable attorney, please [click here](#) to send us an email.

News

FTC Concerned Window Claims Are Not Transparent

On August 29, the Federal Trade Commission (FTC) announced in a press release that it had sent warning letters to 14 window manufacturers and one manufacturer of window glass. The letters state that the FTC had reviewed the advertising claims on the companies' websites and found them to be similar to claims made by five companies that were subject to an FTC enforcement action in February of this year.

In the February enforcement action, which attracted significant attention for its treatment of so-called "up-to" claims, the FTC alleged that the companies made exaggerated and unsubstantiated claims about the energy efficiency of the windows they marketed and the amount of money consumers could expect to save by installing the windows.

In July, the FTC released a consumer study it commissioned during the enforcement action to test consumer perceptions of "up-to" claims. In the press release announcing the release of the study, the FTC stated, "[the report] reinforces the FTC's view that advertisers using [up-to] claims should be able to substantiate that consumers are likely to achieve the maximum results promised under normal circumstances."

The August letters recommend that the recipients review their marketing materials with the following points in mind.

- Energy-savings claims must be backed by scientific evidence.
- The type of savings consumers can expect must be clearly stated.
- "Up-to" claims must not be deceptive.
- Avoid deception when selecting home characteristics for modeling.
- Assumptions must be clearly and prominently disclosed.
- Exercise care in using testimonials or case studies.
- Manufacturers may be liable for misleading or unsubstantiated claims made to dealers or retailers, as well as deceptive claims made directly to consumers.



Law Firm of the Year, National Advertising, *U.S. News and World Report*, 2011-2012



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The FTC's press release stated that the warning letters were part of its ongoing efforts to ensure that advertisers' environmental claims are truthful and properly substantiated. While these letters target only marketers making energy-savings claims, the FTC's reasoning applies to all "up-to" claims.

[Click here](#) to read the FTC's press release and view copies of the warning letters.

Analysis

FTC Schools "Your Baby Can Read"

On August 28, the FTC announced a complaint and \$185 million judgment against Your Baby Can Read, LLC, the marketer of the "Your Baby Can Read" program, writes Venable partner [Leonard L. Gordon](#) in a recent post to Venable's advertising law blog, www.allaboutadvertisinglaw.com.

The complaint, which named the creator of the program as well as the company's former president and CEO individually, alleges the defendants made false and deceptive claims in ads and product packaging that the program could teach infants and toddlers to read and that scientific studies proved the claims. The FTC also alleged that the creator of the program made deceptive expert endorsements in the company's marketing materials.

Gordon writes that there are a couple of takeaways for marketers from this case. First, he says, the FTC found that the ads regarding the program's efficacy required competent and reliable scientific evidence, thus equating the claims with a health or safety claim. Second, the FTC required the settling defendants to cease using the term "Your Baby Can Read" in any way. The FTC does not often use this fairly draconian remedy. Third, the case continues the FTC's efforts to vigorously police advertising involving children.

[Click here](#) to read Gordon's full post on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

FCC, Federal Judge Create Winners and Losers in Contest and Sweepstakes Questions

There has been a win and a loss in the last few days in the legal realm of sweepstakes and contests, write Venable attorneys [Ian D. Volner](#), [Randal M. Shaheen](#) and [Mikhia E. Hawkins](#) in a recent post to Venable's advertising law blog, www.allaboutadvertisinglaw.com.

On the winning side, a federal court judge in New York ruled that poker is a game of skill and not chance. In doing so, the judge tossed out the conviction of a man under the Illegal Gambling Business Act, which the defendant's lawyers argued covered only games of chance such as slot machines and lotteries. On the losing side of the house, the FCC issued a formal notice to CBS Radio finding that the company violated FCC regulations by failing to conduct a consumer contest as advertised and proposed a fine of \$10,000.

The FCC action came in response to a consumer complaint from a contestant who entered a contest run by one of CBS Radio's stations in North Carolina; the FCC investigated claims that the station disseminated conflicting announcements regarding the contest's entry deadline.

Under FCC rules, the Venable attorneys write, a broadcast licensee that offers a prize promotion must disclose the material terms of the promotion (including the time and means of selecting winners) and must conduct the promotion substantially as advertised. The FCC found that CBS Radio failed to run the promotion as advertised and was not swayed by CBS Radio's explanation that the discrepancies were due to its staff's inadvertent errors. The FCC pointed out that inadequate oversight does not excuse the company's failure to administer the promotion as advertised.

[Click here](#) to read the full post on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

[Click here](#) to to read the FCC's notice.

Will "Do Not Track" Destroy Online Ads?

In an August 20 piece published in *U.S. News & World Report*, Venable partner [Stuart P. Ingis](#) writes that the widely used "Do Not Track" slogan fuels baseless fears about online privacy and implies that there should be no online data collection unless consumers opt in. Ingis states that "online data collection is not a 'problem' to be fixed, but an integral part of the Internet. The Internet's architecture requires websites to collect nonpersonal information for basic functions, like serving a page and preventing a browser from receiving the same ad repeatedly."

The business community, Ingis says, supports an easy, persistent option for consumers to opt out of third-party tracking and has invested millions to develop and implement a control mechanism that enables consumers to stop the collection of Web viewing data with limited exceptions, including fraud and security.

This approach "provides consumers with a choice regarding online viewing data, while also ensuring continued free or low-cost products and services and allowing businesses to innovate." In addition, the flow of data supports advertising that allows thousands of large and small online publishers to supply free content.

Nevertheless, Ingis writes, there have been efforts to shift from an open and seamless Internet to one where collection is not permissible unless a consumer opts in. This approach, he says, would harm the online experience and is unnecessary because robust industry self-regulation is already giving consumers transparency and choice over online data collection.

[Click here](#) to read Ingis's editorial in *U.S. News & World Report*.

USPTO Issues Rules Implementing America Invents Act

On August 14, the U.S. Patent and Trademark Office issued rules implementing various provisions of the Leahy-Smith America Invents Act. Venable's intellectual property attorneys have authored a collection of articles outlining the finalized and proposed rules and how those changes will affect organizations.

[Click here](#) to view Venable's overview and access the articles detailing aspects of the individual rules.

Upcoming Events

[2012 Electronic Retailing Association D2C Convention - Las Vegas](#)

September 11-13, 2012

Venable is a proud sponsor of the ERA D2C Convention. The ERA is the only trade association in the U.S. and internationally that represents leaders of the direct-to-consumer marketplace, which includes members that maximize revenues through direct-to-consumer marketing on television, online, mobile and on radio.

Please visit the attorneys of our [Advertising and Marketing Group](#) at booth #915. Venable is also the sponsor of the Pre-Moxie Awards Gala Reception.

[Association of Corporate Counsel Annual Meeting - Orlando](#)

September 30-October 3, 2012

Venable is pleased to support and sponsor the 2012 ACC Annual Meeting. We hope that you will join us at the educational sessions, where several of our attorneys will share their insights and recommendations, and at our show floor booth, #307. Venable is also the 2012 sponsor of the ACC IT, Privacy and E-Commerce Committee as well as the ACC Nonprofit Organizations Committee.

To view the program, please [click here](#).

[Advertising Self-Regulatory Council Annual Conferences - New York City](#)

October 1-3, 2012

Please join Venable attorneys at this three-day meeting addressing advertising self-regulation. Venable partner [Amy Ralph Mudge](#) will speak at the Annual Conference of the National Advertising Division of the Council of Better Business Bureaus on October 1. The Children's Advertising Review Unit's Annual Conference will feature a presentation by Venable partner [Randal M. Shaheen](#) on October 3. Venable attorney [Jonathan L. Pompan](#) will address the Electronic Retailing Self-Regulation Program Summit on October 3.

For more information, please [click here](#).

[Click here](#) to subscribe to Venable's Advertising and Marketing RSS feed and receive the Venable team's insight and analysis as soon as it is posted.

Visit Venable's advertising law blog at www.allaboutadvertisinglaw.com.

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