

**Editors:**

Jeffrey D. Knowles
jdknowles@Venable.com
 202.344.4860

Roger A. Colaizzi
racolaizzi@Venable.com
 202.344.8051

Gary D. Hailey
gshailey@Venable.com
 202.344.4997

In This Issue:

Jeffrey D. Knowles
jdknowles@Venable.com
 202.344.4860

Thomas A. Cohn
tacohn@Venable.com
 212.370.6256

Thomas E. Gilbertsen
tegilbertsen@Venable.com
 202.344.4598

Kristalyn J. Loson
kjloson@Venable.com
 202.344.4522

Jonathan L. Pompan
jlpompan@Venable.com
 202.344.4383

Ian D. Volner
idvolner@Venable.com
 202.344.4814

Honors and Awards

2011 *Chambers USA*
 Award for Excellence
 Winner



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

News**Facebook Reaches Privacy Settlement With FTC**

On Tuesday, the FTC announced a long-anticipated settlement with social media giant Facebook over the site's privacy practices. The settlement, which requires changes to Facebook's privacy practices and 20 years of compliance monitoring, settles allegations in the FTC's eight-count complaint. Among other things, the FTC alleges that Facebook deceived consumers about the availability of a user's data after they deleted their account, its information sharing practices with advertisers and application developers, and the rigor of the company's "Application Verified Process."

In response to Facebook's December 2009 decision to unilaterally change users' privacy settings to make some types of formerly private information public, the order requires Facebook to obtain a user's "affirmative express consent" before it can override that user's privacy settings.

"I'm the first to admit that we've made a bunch of mistakes," Facebook CEO Mark Zuckerberg wrote in a blog post. "In particular, I think that a small number of high profile mistakes...and poor execution as we transitioned our privacy model two years ago, have often overshadowed much of the good work we've done." He also announced the creation of two chief privacy officer roles, one focused on policy and the other on products, to assist with regulatory compliance.

[Go here](#) to read coverage of the settlement in the *Washington Post*.

[Go here](#) to read the FTC's press release announcing the settlement.

[Go here](#) to read Zuckerberg's blog post.

[Go here](#) to read the FTC's blog post on lessons businesses can learn from the Facebook settlement.

FTC Extends COPPA Comment Period Until Dec. 23

The FTC has extended the comment-filing deadline for Children's Online Privacy Protection Act (COPPA) to December 23, 2011, after a number of organizations cited concerns over the complexity of issues raised by the proposed amendment. Initially the deadline for comments had been November 28, 2011. The amendment update for COPPA, which allows parents to control what information websites collect from children under 13, will seek to continue protecting children's privacy as online technologies evolve.

[Go here](#) to read the FTC's press release announcing the change.

Analysis**Unusual Supreme Court Case Could Have Far-Reaching Consequences for TCPA Compliance**

This week, the Supreme Court heard oral arguments in a case arising under the Telephone Consumer Protection Act ("TCPA"). The Act governs the conduct of all telephone solicitation in the United States, including solicitations sent via fax or to cellular telephones via text or email messaging. Venable's **Ian D. Volner** writes that while the case does not address any of the substantive ambiguities in that Act or the FCC's rules implementing the Act, it could significantly affect how future TCPA cases are tried and affect the calculus of risk that telemarketers face in complying with the TCPA.

[Go here](#) to read Volner's analysis of the case.

Recent CIPA Ruling Sets Stage for Call Monitoring Showdown

Last week, a California court of appeals ruled that the California Invasion of Privacy Act prohibits a business from monitoring its own customer service and other telephone calls conducted in the ordinary course of its own business unless consent is obtained from each person on the call. Venable's **Thomas E. Gilbertsen** writes that the decision in the case conflicts with a long-standing federal statute expressly



Top -Tier Firm, *Legal*
500



For more information about Venable's award-winning Advertising and Marketing practice, please visit our website at www.Venable.com/Advertising-and-Marketing.

authorizing one-party consent monitoring and recording for calls conducted in the ordinary course of business. He also notes that the decision refused to follow an earlier Ninth Circuit decision, a case argued by Gilbertsen, which ruled that undisclosed business call monitoring does not constitute an invasion of privacy under CIPA. The stage is set, Gilbertsen believes, for a showdown in the California Supreme Court.

[Go here](#) to read Gilbertsen's analysis of the two cases.

FTC Announces Shutdown of Another "Fake-News" Marketer

On Thursday, the FTC announced that it had shut down another marketer using so-called "fake news" websites to market diet and detox products to consumers. Venable's [Thomas A. Cohn](#) notes that the case stands out for several reasons. The case:

- continues a recent trend of vigorous state AG enforcement, with and without the FTC as co-plaintiff;
- continues the FTC's recent practice of naming third parties, such as credit card processors, that the FTC claims played a role in furthering the alleged fraud; and
- continues a recent FTC trend of obtaining outright bans against specified conduct, in this case, negative-option marketing here, early on in the case.

[Go here](#) to read Cohn's analysis of the case.

NY AG Investigation puts Cause Marketing in the Crosshairs

The New York Attorney General recently launched an investigation into cause-related marketing of "pink ribbon" charities. In its own recognition of National Breast Cancer Awareness Month, the NY AG's office is examining charities and commercial partners that are involved in a cause-related marketing campaign representing that a portion of the sales of a product or service will support breast cancer research or screening. Venable's [Kristalyn J. Loson](#) and [Jonathan L. Pompan](#) write that this initiative demonstrates that organizations, both charities and marketers, engaging in increasingly popular cause-related marketing campaigns should pay close attention to state regulatory requirements for these types of ventures.

[Go here](#) to read the client alert by Loson and Pompan.

Upcoming Events

Affiliate Summit West – Las Vegas

January 9, 2012

Visit Venable during the Meeting Market at Affiliate Summit West, and join us for a presentation by [Thomas A. Cohn](#) on Affiliates Under Fire: Next Steps and Best Practices.

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](#) on 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](#) on 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.

PLI's Green Technology Law and Business 2012 Conference – New York (webinar)

February 24, 2012

[Thomas A. Cohn](#) will be presenting on FTC Revised Green Guides & FTC Enforcement.

[Go 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.

If you have friends or colleagues who would find this newsletter useful, please invite them to subscribe at www.Venable.com/subscriptioncenter.

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | www.Venable.com

ATTORNEY ADVERTISING. Prior results do not guarantee a similar outcome.