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Honors and Awards

Top ranked in *Chambers USA*

Analysis

FTC's .com Disclosures: New Media Still Subject to Old Rules

On March 12, The Federal Trade Commission (FTC) issued new guidance for digital advertisers and marketers titled ".com Disclosures: How to Make Effective Disclosures in Digital Advertising" intended to help mobile and other online advertisers make disclosures clear and conspicuous to avoid deception.

The release of the revised ".com Disclosures" is the first update to the guidance since its original publication in 2000. The central point of the revised guides, write Venable partners **Ellen T. Berge** and **Jonathan L. Pompan** in a recent client alert, is that consumer protection laws apply equally to marketers across all mediums, whether delivered on a desktop computer, a mobile device, or more traditional media such as television, radio, or print.

The revisions include updated guidance that takes into account the increase in the use of small screens, social media, and mobile advertising. The guides also contain a number of mock ads that illustrate the updated principles.

[Click here](#) to read the full text of the client alert authored by Berge and Pompan.

[Click here](#) to read the full text of the revised .com Disclosures.

Paper, Plastic...or Mobile? FTC Issues Report on Mobile Payments

Earlier this month, the FTC issued a staff report titled "Paper, Plastic...or Mobile?: An FTC Workshop on Mobile Payments" addressing mobile payments, their effects on consumers, and potential areas of concern. The staff report follows a workshop held last year on the same issues.

The report discusses the benefits that mobile payments offer consumers but also expresses concern about dispute resolution, data security, and privacy issues affecting consumers, write Venable attorneys **Amy R. Mudge** and **Maggie T. Grace** in a recent post to Venable's advertising law blog, www.allaboutadvertisinglaw.com.

The report urges companies to develop clear policies on resolving disputes over unauthorized and fraudulent charges, and to educate consumers about the same. It also identifies ways in which data can be kept secure, and encourages mobile payment providers to urge all companies in the mobile payment transaction chain to use strong security measures. Lastly, the report briefly discusses international mobile payment issues and highlights examples of governments and international organizations working on mobile payments-related consumer protection issues.

[Click here](#) to read the full text of the blog post by Mudge and Grace.

[Click here](#) to read the full text of the FTC's report.

Why So Negative on Negative Option?

Continuity marketing is a pervasive component of the American economy. Today, consumers can have



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



Top-Tier Firm *Legal 500*



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regularly scheduled shipments of just about anything -- DVD rentals, bacon, black socks, even razorblades -- delivered to their doors. Despite the utility of continuity, or "negative option," programs, regulation of such programs has tightened at both the state and federal levels, write Venable partners [Jeffrey D. Knowles](#) and [Gary D. Hailey](#) in the March 2013 edition of the *DRMA Voice*.

When it comes to continuity marketing, write Knowles and Hailey, an ounce of prevention beats a pound of cure. Although they note that regulations governing continuity marketing are evolving and vary widely from state to state, the pair outline best practices that can help marketers avoid many consumer complaints, chargebacks, and regulatory inquiries.

[Click here](#) to read the full text of their column.

Cy Pres Settlements: Giving Back Receives Increased Scrutiny

Much of what happens in the class action world is subject to a discretionary standard of review on appeal – including class certification and settlement decisions. Two recent appellate decisions on opposing ends of the discretionary spectrum illustrate that the discretionary standard of review still leaves plenty of room for a second opinion, writes Venable partner [Thomas E. Gilbertsen](#) in a recent post to Venable's advertising law blog, www.allaboutadvertisinglaw.com.

Both decisions focus on so-called *cy pres* awards, which have been a common solution to the question of what to do with undistributed funds after all the claim forms from a class action settlement have been paid. The *cy pres* award is essentially a donation of leftover settlement funds to a designated charitable organization.

Courts are increasingly wary about the use of *cy pres* awards in lieu of cash benefits paid directly to class members, so class action defendants must do more in support of these settlements when submitting them for court approval. Gilbertsen notes that class members dissatisfied with benefit levels and claim form processes are free to object or vote with their feet by opting out before the settlement goes live. However, he says, absent a challenge about the sufficiency of notice or claim form administration, objectors should not be allowed to challenge the sufficiency of benefits in hindsight.

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

Upcoming Events

LeadsCon - Las Vegas

March 18-20, 2013

Join Venable attorneys at this conference which showcases the people and companies in vertical media and engagement advertising. Venable partner [Jonathan L. Pompan](#) will present "What Lead Generators Need to Know about the Consumer Financial Protection Bureau (CFPB)."

[Click here](#) to register.

2013 Association of National Advertisers Advertising Law and Public Policy Conference - Washington, DC

March 19-20, 2013

Venable is proud to sponsor this conference and to host a cocktail reception honoring women in advertising on Tuesday, March 19. Venable partner [Amy Ralph Mudge](#) will moderate a thought-provoking panel entitled "Have Women In Advertising Really Come a Long Way, Baby?" The panel will discuss images of women in advertising in traditional as well as new media, and whether those idealized images should provoke self-regulation or even government enforcement.

[Click here](#) to register.

Response Expo - San Diego

April 2-4, 2013

Please join Venable at the Response Expo 2013, which brings together key decisionmakers and industry leaders from the corporate marketing arena and direct response spectrum. Please stop by booth #212 and meet Venable's [Advertising and Marketing attorneys](#). Venable is the proud sponsor of the Tiki Party networking event, which will occur on April 3 from 4:30 - 6:00 p.m.

To receive a free Expo Hall Badge to attend Response Expo, [click here](#) and enter the promo code SOCAL13.

ad:tech - San Francisco

April 9-10, 2013

ad:tech spans the full ecosystem of advertising, digital marketing and technology that moves business forward. Please join Venable attorneys at our booth on the show floor, #2551.

To schedule a meeting with one of our attorneys, please [click here](#).

To register, please [click here](#).

CARU's 3rd Annual Children's Advertising & Online Privacy Conference - Beverly Hills, CA

April 10, 2013

Hear experts provide a timely and in-depth review of the legal and practical mobile challenges posed by implementing the FTC's new Children's Privacy regulations as they apply to apps, social media, websites and more. Venable partner **Gregory J. Sater** will join officials from the FTC and CARU to present "Claim Substantiation: It's Not Just For Adults Anymore."

[Click here](#) to register.

ACI's 2nd Green Marketing Compliance Summit - Chicago

April 17-18, 2013

Aimed at in-house counsel, senior executives, and outside counsel in the advertising, promotions, marketing, media, and e-commerce industries, this ACI Summit will focus on the legal risk, compliance, and public policy challenges faced in environmental marketing. Please join Venable partner **Randal M. Shaheen** when he presents "Mitigating the Risk of Enforcement and Lawsuits: Guidance from the Government and Self-Regulating Bodies" on Thursday, April 18.

[Click here](#) to register.

[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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