



May 15, 2014

**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

**Jessie F. Beeber**  
jbeeb@Venable.com  
212.808.5677

**Ellen Traupman Berge**  
etberge@Venable.com  
202.344.4704

**Suzanne Fay Garwood**  
sgarwood@Venable.com  
202.344.8046

**Leonard L. Gordon**  
lgordon@Venable.com  
212.370.6252

**Jonathan L. Pompan**  
jlpompan@Venable.com  
202.344.4383

**Melissa Landau Steinman**  
mlsteinman@Venable.com  
202.344.4972

**Ian D. Volner**  
idvolner@Venable.com  
202.344.4814

**Sarah J. Abramson**

**Analysis**

## The Rulings the FTC Won't Forget (and Neither Should You)

The Federal Trade Commission (FTC) recently scored three decisive victories in litigated advertising cases. Although none of the rulings are particularly ground-breaking, they constitute a veritable FTC enforcement wish list, write Venable attorneys **Jeffrey D. Knowles**, **Leonard L. Gordon**, and **Sarah J. Abramson** in the May issue of *Electronic Retailer* magazine. Marketers, they write, should count on seeing these decisions cited in many future FTC cases.

Click here to [learn why these decisions are destined to give marketers nightmares](#).

## \$6 Million Reasons to Regret That Tweet

Duane Reade is a veritable New York institution. In a recent tweet, it even hashtagged itself as "#NYC's favorite drugstore." While there's no problem with that claim, write Venable attorneys **Melissa Landau Steinman**, **Jessie F. Beeber**, and **Kristen R. Brown** in a recent post to Venable's advertising blog, Duane Reade did something else that could leave the company writing a big check. The tweet included a photo of actress Katherine Heigel leaving one of the chain's stores.

In today's market, the Venable attorneys write, celebrities understand that their images generate real commercial value for brands. And, they expect to be compensated, even though the line between editorial and commercial content in social media can be a blurry one. So it wasn't much of a surprise when Heigel sued the drugstore chain for unauthorized use of her image in violation of the Lanham Act and New York laws governing her rights of privacy and publicity.

Read the blog post and [learn how to mitigate liability when using celebrities in social media](#).

## Hold the Phone: FCC, Courts Bring Some Clarity to TCPA

The Federal Communications Commission's (FCC) modifications to the Telephone Consumer Protection Act (TCPA) last October have put marketers on edge and sent plaintiffs' attorneys running amok.

In an April blog post, Venable attorneys **Ian D. Volner** and **Mark S. Goodrich** wrote that long-running ambiguity about what constitutes "prior express consent" when calling consumers is a significant source of TCPA litigation. In a follow-up blog post this week, Volner, Goodrich, and Venable partner **Ellen T. Berge** write that two recent instances of FCC guidance and a court ruling have provided marketers with some much-needed clarity.

Read the blog post to [learn how the TCPA landscape has changed](#).

Read Venable's latest alert to [learn about other notable TCPA decisions and complaints](#).

## FTC, CFPB Tag Team Lead Generator

The FTC didn't go it alone in its latest investigation targeting mortgage lead generation practices, write

**Sarah J. Abramson**  
sjabramson@Venable.com  
202.344.4748

**Kristen R. Brown**  
krbrown@Venable.com  
202.344.4468

**Mark S. Goodrich**  
msgoodrich@Venable.com  
202.344.4715

## Honors and Awards

Law Firm of the Year, National Advertising, *U.S. News and World Report*, 2012 and 2014



Top ranked in *Chambers USA* 2013



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](http://www.Venable.com/Advertising-and-Marketing)

Venable partners [Suzanne Fay Garwood](#) and [Jonathan L. Pompan](#) in a recent client alert. Instead, the Commission teamed up with the Consumer Financial Protection Bureau (CFPB) to review approximately 800 randomly selected mortgage-related advertisements from across the country. The result was an FTC settlement with a Houston-based lead generation company for violations of the FTC Act, the Mortgage Acts and Practices Advertising Rule, Regulation N, the Truth in Lending Act, and Regulation Z.

Although the enforcement action focused on the mortgage industry, write Garwood and Pompan, it is an important reminder that lead generators must comply with laws applicable to the products they tout, and lead buyers should ensure the advertising and marketing generating the leads they buy comply with applicable laws and regulations.

Read the client alert to [learn more about the case](#).

[Read the FTC's press release about the case here](#).

---

## Upcoming Events

**SURTEX - New York, NY**  
May 18-20, 2014

SURTEX is a global marketplace for original art and design that convenes 6,000 buyers and manufacturers from 49 countries to buy or license the newest designs from approximately 1,000 artists. Join Venable attorneys for several educational sessions during the conference, including [Joshua J. Kaufman](#) who will present "Anatomy of a Licensing Contract" on Sunday, May 18 at 3:30 p.m. ET, and [Meaghan Hemmings Kent](#) who will present "Protecting Artwork through Copyrights & More" on Monday, May 19 at 8:00 a.m. ET. Also, be sure to join [Po Yi](#) and Joshua J. Kaufman for "Licensing Agreements: Challenges & Resolutions" on Monday, May 19 at 10:00 a.m. ET.

[Click here to learn more and register](#).

**Media Finance Focus 2014 – Miami, FL**  
May 19-21, 2014

Venable is a proud sponsor of the Media Financial Management Association's Media Finance Focus 2014, an annual conference that convenes media, financial, and business executives. Venable partner [Stephanie M. Loughlin](#) will present "Federal Tax Update" on Monday, May 19 at 2:40 p.m. ET. Venable partners [Melissa Landau Steinman](#) and Stephanie M. Loughlin will present "Gift Cards, Coupons, and Loyalty Programs" on Tuesday, May 20 at 2:00 p.m. ET. Also, be sure to join Venable partners [Po Yi](#) and Melissa L. Steinman for "Advertising and Marketing on Social Media: Staying Ahead of the Curve" on Tuesday, May 20 at 3:00 p.m. ET.

[Click here to learn more and register](#).

**The CNP Expo - Orlando, FL**  
May 19-22, 2014

Venable partner [Ellen T. Berge](#) will moderate the panel "I'm from the Government and I'm Here to Help" at the Card Not Present (CNP) Expo on Wednesday, May 21 at 1:15 p.m. ET. The CNP Expo provides a meeting place for merchants, banks, processors, anti-fraud software providers, legal experts, alternative payment providers, card networks, and others to learn how to leverage card-not-present payments in an increasingly multi-channel retail sales environment.

[Click here to learn more and register](#).

**ERSP 10th Anniversary and ERA Government Affairs Fly-in – Washington, DC**  
May 20-21, 2014

Venable is a proud sponsor of the Electronic Retailing Self-Regulation Program's (ERSP) 10th anniversary program celebrating a decade of self-regulation. On Tuesday, May 20, Venable partner [Jeffrey D. Knowles](#) will present "Broadening the Scope: Self-Regulation in the Telemarketing Industry and Beyond" as part of an afternoon of panel discussions on advertising self-regulation in the direct response industry. Venable is also a sponsor of the ERA Government Affairs Fly-in on May 21, which brings together direct retailing industry leaders to discuss the current political landscape and what to expect in the year ahead.

[Click here to learn more and register](#).

### Cause-Related Marketing Forum - Chicago, IL

May 28-29, 2014

Venable is a proud sponsor of the Cause-Related Marketing Forum, an annual conference that convenes national for-profit marketers and large nonprofits engaged in cause marketing activities. Join Venable associate [Kristalyn J. Loson](#) for "Legal Q&A" on Thursday, May 29 at 3:15 p.m. CT.

[Click here to learn more and register.](#)

### ABA Section of Litigation's Fourth Annual Food & Supplements Workshop - Wayzata, MN

June 5, 2014

Join Venable partner [Claudia Lewis](#) for the panel "FSMA Developments" on Thursday, June 5 at 1:15 p.m. CT at the American Bar Association Section of Litigation's Food & Supplements Workshop. Hear a review of key statutory and regulatory updates, including a discussion of the latest proposed regulations and important issues facing our industry.

[Click here to learn more and 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](http://www.allaboutadvertisinglaw.com).

CALIFORNIA DELAWARE MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | [www.Venable.com](http://www.Venable.com)

© 2014 Venable LLP. This alert is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address. ATTORNEY ADVERTISING.

575 7th Street, NW, Washington, DC 20004

© 2014 Venable LLP | [www.Venable.com](http://www.Venable.com) | 1.888.VENABLE