

**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**In This Issue****Jeffrey D. Knowles**jdknowles@Venable.com
202.344.4860**J. Douglas Baldridge**jbaldridge@Venable.com
202.344.4703**Amy Ralph Mudge**amudge@Venable.com
202.344.4743**Randal M. Shaheen**rmshaheen@Venable.com
202.344.4488**Jonathan L. Pompan**jlpompan@Venable.com
202.344.4383**Christopher S. Crook**cscrook@Venable.com
202.344.4752**Ari N. Rothman**anrothman@Venable.com
202.344.4220**Honors and Awards**2011 *Chambers USA* Award for
Excellence Winner**Analysis****Commercial Email Advertisements Using Both Proxy/Private Registered Domains and Generic "From" Lines Deemed Unlawful**

The California appellate court's recent decision in *Balsam v. Trancos* requires marketers nationwide using commercial email advertisements to include in the "from" line of each email a domain name that is registered to the sender which can be determined by performing a WHOIS look-up, or the name of the sender or marketer on whose behalf the email was sent.

Venable attorneys [J. Douglas Baldridge](#) and [Ari N. Rothman](#) explain in a recent client alert why this ruling means marketers – and the companies they hire, including affiliate networks – must take immediate action to ensure compliance with this latest development in anti-spam law.

[Click here](#) to read Venable's *Trancos* client alert.

FTC's Do-Not-Call Report Holds Important Guidance for Marketers

In December, the Federal Trade Commission ("FTC") submitted its biennial report to Congress on the use of the Do-Not-Call Registry as required under the Do-Not-Call Fee Extension Act of 2007. The report provides statistics on use of the list by consumers and businesses. However, as Venable attorneys [Jeffrey D. Knowles](#) and [Jonathan L. Pompan](#) write in the March 2012 edition of *Electronic Retailer* magazine, the report provides practical guidance for telemarketers and companies that provide leads to telemarketers when it comes to Do-Not-Call compliance.

Among that guidance is a lengthy discussion of the "existing business relationship" exception to the Do-Not-Call Rule, which is provided by provisions within the FTC's Telemarketing Sales Rule ("TSR"), and similar Federal Communications Commission ("FCC") regulations. The FTC's report, Knowles and Pompan write, demonstrates that the exception is much narrower than many marketers believe. They also note that the FTC has enforced the Do-Not-Call regulations aggressively over the past several years and there is no indication that it intends to be any less vigilant in the future.

[Click here](#) to read their column, which is on page 38 of the publication.

NAD Rules MSRP Must Equal Average Retail Price

Venable partners [Randal M. Shaheen](#) and [Amy Ralph Mudge](#) write on Venable's advertising law blog, www.allaboutadvertisinglaw.com, that a recent ruling by the National Advertising Division of the Council of Better Business Bureaus ("NAD") could have an impact on the way retailers advertise prices.

In the recent decision, the NAD concluded that it was deceptive to list the manufacturer's suggested retail price ("MSRP") and compare it to the store price unless the MSRP reflected average resale prices. The NAD cited to the FTC's "Guides Against Deceptive Pricing," which prohibit use of an inflated regular price as a benchmark for a sale claim.

[Click here](#) to read their blog post.

Events of January Draw Attention to Piracy and Counterfeiting

The global and very public debate over the Stop Online Piracy Act ("SOPA"), the Protecting Intellectual



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



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Property Act ("PIPA"), the Anti-Counterfeiting Trade Agreement ("ACTA"), and the United States government's takedown of Megaupload.com during January thrust piracy and counterfeiting into the headlines, write Venable attorneys [Jeffrey D. Knowles](#) and [Christopher S. Crook](#) in the March edition of *Response* magazine. In their column, they explore public perceptions of counterfeiting and piracy as well as some measures patent holders can use to protect their intellectual property.

[Click here](#) to read their column, which is on page 47 of the publication.

News

FTC Cracks Down on Deceptive Car Dealer Ads

On Wednesday, the FTC announced proposed settlements with five auto dealers that require those dealers to stop advertising that they will pay off a consumer's trade-in no matter what the consumer owes on the vehicle. The office of the Iowa Attorney General assisted in the investigation.

The FTC alleged that the dealers' deceptive advertising tricked consumers into thinking that they would no longer be responsible for paying off the loan balance on their trade-in. Despite the dealers' claims, the FTC said, consumers still end up being responsible for paying the difference between the trade-in loan balance and the vehicle's value. The complaints charge that the dealers' representations that they will "pay off" what the consumers owe are false and misleading, and violate the FTC Act. The complaints in three of the cases allege violations of the Truth in Lending Act ("TILA") and its implementing Regulation Z for failing to disclose certain credit-related terms.

In two of the cases, violations of the Consumer Leasing Act (CLA) and its implementing Regulation M for failing to disclose certain lease-related terms are also alleged.

Although the proposed orders vary, in some aspects, from dealer to dealer, the following conditions are included in at least one of the orders:

- The dealer is prohibited from misrepresenting that it will pay the remaining loan balance on a consumer's trade-in;
- The dealer is prohibited from misrepresenting any other facts related to leasing or financing a vehicle;
- The dealer is required to comply with TILA and Regulation Z;
- The dealer is required to make clear and conspicuous disclosures when advertising certain terms related to issuing consumer credit;
- If any finance charge is advertised, the dealer must state the rate as an "annual percentage rate" or as the "APR";
- The dealer is required to clearly and conspicuously make all lease-related disclosures required by the CLA and Regulation M, including the monthly lease payment;
- The dealer is required to retain copies of relevant advertisements and materials substantiating claims made in their advertisements;
- The dealer is required to provide copies of the order to certain employees;
- The dealer is required to file compliance reports with the FTC throughout the 20-year span of the compliance order.

The FTC will accept public comments on the proposed settlement orders through April 16, 2012.

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

[Click here](#) to read coverage of the settlements in the *Detroit Free Press*.

Upcoming Events

American Conference Institute's Food & Beverage Marketing & Advertising Law Conference

March 19-20, 2012

Venable is a proud sponsor of ACI's Food & Beverage Marketing & Advertising Law Conference. Join [Todd A. Harrison](#) for a presentation on "Pom and Its Progeny – Examining Development Case Law Addressing Evolving FTC Requirements for Health-Related Claims" and [Claudia A. Lewis](#) for a "Deep Dive into Food and Beverage Claim Substantiation."

DMA 2012 - Washington D.C.

March 26-27, 2012

Venable will host the Direct Marketing Association's Issue Briefing on Monday, March 26. **Stuart P. Ingis** will join a panel on the Shifting Sands of Online Privacy.

ANA Advertising Law & Public Policy Conference - Washington, D.C.

March 28-29, 2012

Venable is a proud sponsor of the ANA Advertising Law & Public Policy Conference. Join Venable's **Randal M. Shaheen** in a discussion of two major class actions lawsuits filed against brand notables Reebok and Dannon and **Stuart P. Ingis** as he participates in a panel discussion on the ever changing landscape of internet privacy law.

American Bar Association's Antitrust Law 2012 Spring Meeting - Washington D.C.

March 26-30, 2012

Venable's **Amy Ralph Mudge** will chair and moderate a panel on "The Supreme Court Redirects Class Action Defense" and **Claudia A. Lewis** will join a panel on the Fundamentals of Consumer Protection.

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 (PST) and will take place at the Radisson Hotel at Los Angeles Airport.

[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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575 7th Street, NW, Washington, DC 20004

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