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News

Former BCP Director Discusses how FTC Picked its Fights

In an interview posted to the *Wall Street Journal's* Law Blog on January 22, David Vladeck, former Director of the Federal Trade Commission's (FTC) Bureau of Consumer Protection, discussed marketers' use of consumer data, how the agency picked its battles, and what new enforcement actions related to data/privacy cases could be on the horizon.

[Click here](#) to read the interview on the *WSJ* Law Blog.

Analysis

Court Pierces the Veil on Anonymous Online Reviews

Anonymous fake online reviews are back in the news, write Venable attorneys **Randal M. Shaheen** and **Mark S. Goodrich** in a recent post to Venable's advertising law blog. And, for once, there is good news for marketers. They detail a recent Virginia case in which a company alleged it was the victim of fake negative reviews on rating site Yelp.

After trying (unsuccessfully) to work with Yelp and then conducting its own internal investigation, the company subpoenaed the site for the identity of the reviewers. When Yelp refused, the case went to court. On January 7, the Virginia Court of Appeals acknowledged that the First Amendment protects anonymous speech, but also examined and upheld as constitutional a Virginia statute permitting the uncovering of the identity of an anonymous Internet communicator under certain circumstances.

This case, write Shaheen and Goodrich, could provide companies with leverage against sites such as Ripoff Report and lead to a drop in false online reviews. However, it is not all wine and roses for marketers. The company prevailed because it was able to demonstrate that the anonymous reviews could not be actual customers and met the conditions of the Virginia statute. In addition, the statute in this case is unique to Virginia, which means the holding is not easily transferable to other states. They write that while this case may not result in a litigation boom against private reviewers and websites providing negative reviews, it does give marketers, especially those in Virginia, a new tool to fight fake reviews.

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

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

FTC Finds Green Diaper Claims Don't Hold Water

On January 17, the FTC announced an enforcement action against Down to Earth Designs, Inc. for the use of allegedly deceptive green claims when marketing its gDiapers product. Specifically, the complaint alleged that the company made unqualified claims that the gDiaper inserts and wipes are plastic free, compostable, and biodegradable when flushed or thrown out.

The crux of the complaint, write Venable attorneys **Leonard L. Gordon** and **Sarah J. Abramson** in a post to Venable's advertising law blog, is that the FTC alleges that the majority of the inserts will eventually end up in a landfill. Once something is in a landfill, according to the FTC, it is impossible for the material to break down in a reasonable amount of time.

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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*

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This enforcement action demonstrates that green claims are a hot topic and the FTC is serious about carefully qualified green claims. When it comes to green claims, write Gordon and Abramson, it's best to consider how the product is typically disposed of, rather than the best-case scenario.

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

[Click here](#) to read the FTC's press release and complaint in the Down to Earth Designs matter.

A Warning Letter is Often Just the Beginning

Receiving a warning letter from the Food and Drug Administration (FDA) can ruin a marketer's day, write Venable attorneys [Ralph S. Tyler](#) and [Maggie T. Grace](#) in a recent post to Venable's advertising law blog. In fact, just about the only thing that can make life more miserable is the inevitable class action lawsuits that arrive hot on the heels of the warning letter.

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

[Click here](#) to read the text of the *Casey v. 23andMe, Inc.* complaint.

Supreme Court Rules that AG Suits Not Removable Under CAFA

On January 14, The United States Supreme Court ruled in *Mississippi ex rel. Hood v. AU Optronics Corp.* (Hood) that a suit filed by a state as the sole plaintiff does not constitute a "mass action" under the Class Action Fairness Act of 2005 (CAFA). In a recent client alert, Venable attorneys [Thomas E. Gilbertsen](#) and [Molly T. Cusson](#) write that the decision reinforces traditional practice and the long-understood right of state attorneys general to bring consumer protection enforcement actions in their home forums without exposing their suits to removal risks. The *Hood* decision removes doubt – expressed as a minority view in federal court decisions addressing this issue – that these actions may be removed to federal court under CAFA.

In the client alert, Gilbertsen and Cusson provide analysis of the case and its potential impact in the consumer protection space, especially the worry that class action plaintiffs' attorneys may be able to use the decision to evade CAFA application.

[Click here](#) to read the full text of the client alert by Gilbertsen and Cusson.

[Click here](#) to read the majority opinion in the case.

Upcoming Events

12th Anti-Counterfeiting & Brand Protection West Coast Summit – San Francisco, CA

January 27-29, 2014

Join Venable partners [Marcella Ballard](#) and [Justin E. Pierce](#) at the 12th Annual Anti-Counterfeiting & Brand Protection West Coast Summit. Ms. Ballard will present "An Update on Anti-Counterfeiting Field Investigations" on January 28 at 1:15 p.m. PT, alongside a legal executive from a major motion picture studio. Mr. Pierce will join other industry professionals on a panel titled "Border Measures: How to Deal with the Importation and Transit of Counterfeit Goods" on January 29 at 1:45 p.m. PT.

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

ACI's 3rd Advanced Summit on Food & Beverage Consumer Fraud Litigation – San Francisco, CA

January 28, 2014

Venable partner [Todd A. Harrison](#) will present "Minimizing the Risk of 'Piggy Back' Class Actions Post-FDA and FTC Warning Letters and Enforcement Actions" at the American Conference Institute's 3rd Advanced Summit on Food & Beverage Consumer Fraud Litigation. Learn strategies to avoid warning letters, what can trigger negative attention from the government, how to craft a response to a government warning letter without creating a litigation roadmap, and more.

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

Webinar: "Legal Issues in Running Social Media and Mobile Sweepstakes and Contests"

February 6, 2014 | 1:00 p.m. – 2:30 p.m. ET

As the regulatory landscape governing social and mobile media continues to evolve, marketers utilizing new media must adapt and be cognizant of potential legal issues. Join Venable partner **Melissa Landau Steinman** for this CLE-accredited webinar and learn the legal issues relating to conducting a prize promotion through social and/or mobile media.

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

ERA The Great Ideas Summit – Miami, FL

February 10-12, 2014

Join Venable, a proud sponsor of the "Thirsty Tuesday" reception, on Tuesday, February 11 from 6:00 p.m. to 7:30 p.m. ET at ERA's The Great Ideas Summit – the premier conference for electronic retailing executives as well as C-level marketers and suppliers. Meet the attorneys of **Venable's Advertising and Marketing Practice Group** on the show floor at booth number three.

[Click here](#) to register and receive a \$100 discount as a Venable guest when you use promotion code **EX85692**.

Digital Entertainment World – Los Angeles, CA

February 18-20, 2014

With content at its core, Digital Entertainment World is a leading business-to-business event and marketplace for global media and technology executives. Venable partner **Po Yi** will moderate a panel titled "The Role of Brands in Creating Effective, Impactful & Monetizable Digital Content" on February 19 at 11:15 a.m. PT. Venable partner **Justin E. Pierce** will moderate "Balancing Act: Embracing Innovation and IP Protection" on February 19 at 2:45 p.m. PT.

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

ACI's Legal, Regulatory and Compliance Forum on Cosmetics – New York, NY

February 19-21, 2014

Join Venable partner **Claudia A. Lewis** on February 19 at 2:00 p.m. ET for a "Working Group on Cosmetics 101" at the American Conference Institute's Legal, Regulatory and Compliance Forum on Cosmetics. This hands-on workshop will provide an overview of the law and regulations governing cosmetics. Key topics that will be addressed include the role and authority of the FDA in the cosmetics market, structure/function claims, label requirements, cosmetic promotion and advertising, adverse event reporting, and recalls.

[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.

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