



October 17, 2013

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

Amy Ralph Mudge
amudge@Venable.com
202.344.4743

Jonathan L. Pompan
jlpompan@Venable.com
202.344.4383

Randal M. Shaheen
rmshaheen@Venable.com
202.344.4488

James L. Shea
jlshea@Venable.com
410.244.7734

Melissa Landau Steinman
mlsteinman@Venable.com
202.344.4972

Maura A. Marcheski
mamarcheski@Venable.com
202.344.4523

Alexandra Megaris
amegaris@Venable.com
212.370.6210

Honors and Awards

Welcome to the 100th issue of Venable's *Advertising Law News and Analysis*. Over the past 27 months, our goal has been to provide information that helps inform your business, legal and marketing decisions. We hope you find each Thursday's issue insightful and useful. If you would like, [click here](#) and let us know how we are doing.

We look forward to providing you with advertising law insights for the next hundred issues – and beyond. Thank you for reading.

News**Venable Opens Bay Area Office**

On October 9, Venable opened a new office in San Francisco, the firm's second office on the West Coast. In a Venable press release, firm Chairman **James L. Shea** discussed how Venable's legislative and regulatory teams, including its advertising practice, are uniquely positioned to help the Bay Area's burgeoning technology industry, and other Northern California industries, navigate the inner workings of the federal government.

[Click here](#) to read Venable's press release announcing the new San Francisco office.

[Click here](#) to read the *San Francisco Business Journal's* coverage of Venable's Bay Area office.

District of Columbia, 48 States Reach \$30 Million Settlement with Buying Club Marketers

On October 10, Florida Attorney General Pam Bondi announced that Florida, 47 other states, and the District of Columbia reached an agreement with Affinion, Inc., Trilegiant Corp. and Webloyalty.com to settle allegations that the companies enrolled consumers in buying clubs and then billed consumers' credit cards without authorization. The \$30 million settlement, which highlights the importance of disclosures and the regulatory scrutiny faced by continuity marketing programs, requires the companies to inform consumers that they can be enrolled in clubs if they accept certain offers, periodically remind consumers that they are enrolled in the clubs, and make cancellation policies more generous.

[Click here](#) to read Attorney General Bondi's press release announcing the settlement.

[Click here](#) to view a copy of the consent judgment.

Analysis**The Government is Open. Now What?**

Early this morning, the federal government reopened. Now marketers and advertisers are looking for guidance on how the Federal Trade Commission (FTC) and Federal Communications Commission (FCC) will handle backlogged work, paused investigations, and everything else that ground to a halt over the past two weeks. Shutdowns are few and far between and each one is unique, write Venable partners **Amy Ralph Mudge** and **Randal M. Shaheen** in a post to Venable's advertising law blog, so there is not much useful precedent. In the post, they share insights gleaned from interaction with the FTC earlier today and thoughts on how the agency is likely to view some other situations. In any case, marketers can expect the FTC to provide some guidance soon, perhaps even by the time you read this.

Top ranked in *Chambers USA*
2013



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



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

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

Sweepstakes and Promotions a Minefield for Marketers

Only a handful of consumers may win a marketer-sponsored sweepstakes or contest. However, write Venable attorneys [Melissa Landau Steinman](#) and [Maura A. Marcheski](#) in a recent post to Venable's advertising law blog, it is far too easy for the real loser to be the company sponsoring the promotion. In an area littered with legal landmines, there are countless ways a promotion sponsor can become the subject of litigation or an enforcement action. To highlight this point, Steinman and Marcheski detail a number of recent sweepstakes and contests that have gone awry and given marketers more than they bargained for.

[Click here](#) to read the post by Steinman and Marcheski on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

CFPB Keeps Pressure on Credit Card Marketing

In September, the Consumer Financial Protection Bureau (CFPB) announced a third enforcement action involving a major bank and alleged unfair billing practices for "add-on" products such as credit monitoring services. This enforcement action is part of a larger trend, write Venable attorneys [Jonathan L. Pompan](#) and [Alexandra Megaris](#) in a recent post to Venable's advertising law blog. They point to a recent CFPB report outlining the Bureau's "outstanding concerns" with certain disclosure practices as a signal that the CFPB is watching and that credit card companies and their marketing partners should ensure the i's are dotted and the t's are crossed when developing advertising.

[Click here](#) to read the post by Pompan and Megaris on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

Upcoming Events

[Webinar: "Resolving Class Actions: A Panoply of Challenges and Creative Settlement Solutions in Light of New Developments in Class Action Practice" for Class Action Insurance Consultants](#)

October 22, 2013
2:00 p.m. - 3:30 p.m. ET

Join Venable partner [Roger A. Colaizzi](#) for this complimentary CLE webinar for Class Action Insurance Consultants, hosted by HB Litigation Conferences. Learn strategic case selection techniques, creative settlement tactics, and tactical responses to class action complaints, motions to dismiss, and class certification. In addition to a discussion of recent, key decisions regarding commonality and ascertainability, and how these decisions affect the sustainability of class action cases, this panel will provide a thought provoking examination of the class action landscape.

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

[Webinar: "Class Actions: New Developments & Approaches for Strategic Response" for the ABA Section of Antitrust Law, Private Advertising Litigation Committee](#)

October 25, 2013
12:00 p.m. - 1:00 p.m. ET

Attend this interactive webinar hosted by the ABA Section of Antitrust Law, Private Advertising Litigation Committee, and hear Venable partner [Roger A. Colaizzi](#) and other panelists discuss recent and significant developments in class action practice, including the key decisions regarding ascertainability and commonality – *Thomasson v. GC Services* (Sept. 2013), and *Carrera v. Bayer* (Aug. 2013). Learn creative approaches to responding to class actions, including settlement tactics and determining "take rates." In addition to providing plaintiff and defense perspectives, this panel will discuss class action insurance to help bolster your class action toolkit.

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

[ad:tech New York – New York City](#)

November 6–7, 2013

ad:tech spans the full ecosystem of advertising, digital marketing and technology that moves business

forward. Please join Venable attorneys at our booth (#1006) on the show floor.

[Click here](#) to register and receive 25% off all passes when you enter discount code **NY13EXH25**.

SupplySide West – Las Vegas, NV

November 12–16, 2013

SupplySide West brings together key professionals, thought leaders, and executives who drive the dietary supplement, food, beverage, animal nutrition, personal care, and cosmetic marketplace to explore and discover innovations from around the world. Join Venable partners **Todd A. Harrison** and **Claudia A. Lewis** for a thought-provoking town hall discussion titled “What Regulators and Other Attorneys Will Not Tell You About FDA, FTC and Class Action Lawsuits.” Learn the contours of a permissible structure/function claim, and the type of evidence you need to substantiate claims, plus, strategic steps you can take to minimize your regulatory risk, plaintiff class action exposure, and how to respond to an FDA warning letter, a demand from the FTC, and threatened legal action by plaintiff class action attorneys.

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

35th Annual Brand Activation Association Marketing Law Conference – Chicago

November 18–20, 2013

Venable is proud to sponsor the BAA Marketing Law Conference, featuring the nation's leading speakers from the Marketing and Advertising Law Bar and from major brands and prominent regulators. Venable partner **Melissa Landau Steinman** will present a session on gift cards, coupons, and loyalty programs. Joining her as speakers at the conference are Venable partners **Po Yi**, who will join a roundtable to discuss legal aspects of partnering with the media on integrated marketing programs, and **Amy Ralph Mudge**, who will address how to respond when the FTC challenges advertising.

Please join Venable at these sessions and at our reception at the House of Blues on November 18.

[Click here](#) to learn more about the BAA Conference and to receive \$100 off your registration as a Venable guest when you enter discount code **VENABLE100**.

[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.

CALIFORNIA DELAWARE MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | www.Venable.com

© 2013 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

© 2013 Venable LLP | www.Venable.com | 1.888.VENABLE