



August 8, 2013

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Register Now for ERA D2C Convention

Venable is a proud sponsor of the Electronic Retailing Association's D2C Convention on September 24-26, 2013 in Las Vegas. Please join our attorneys as they host the Pre-Moxie Awards reception, present two educational sessions, and honor Venable partner **Jeffrey D. Knowles**, recipient of the 2013 ERA Lifetime Achievement Award.

To obtain a discounted exhibit hall pass that will allow you access to the expo as a Venable guest, please [click here](#) and register using the code **EI320D26**.

Analysis

NAD Turns up the Heat on "Up To" Claims

In a recent National Advertising Division (NAD) case challenging claims made by Nest Labs, Inc. for its Nest Programmable Thermostats, the advertising industry self-regulatory body took a tough stance on so-called "up to" claims. The decision is in line with recent Federal Trade Commission (FTC) enforcement actions involving energy savings claims and marks a change at NAD, write Venable partners **Amy Ralph Mudge** and **Randal M. Shaheen** in a recent post to Venable's advertising law blog.

In previous cases, NAD had used more traditional substantiation requirements. However, in the Nest decision, NAD required that the company's substantiation show that a majority of consumers using the product under ordinary operating conditions will achieve the maximum touted results.

Mudge and Shaheen write that it is too soon to know whether NAD has turned from its long-standing substantiation standard for "up to" claims, or is taking a bifurcated approach based on the cost of the items for which the claims are made.

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

[Click here](#) to read a blog post by Venable partner **Gary D. Hailey** summarizing the FTC's stance on "up to" claims.

[Click here](#) to read NAD's press release about the Nest Labs decision.

The 411 on Calling Cell Phones? It's About to Change

In the August edition of the *DRMA Voice*, Venable attorneys **Jeffrey D. Knowles**, **Ellen T. Berge**, and **Annie H. Lee** write that federal rules taking effect on October 16, 2013 will make it more difficult for marketers to call and text cell phones. And, they write, class action attorneys are chomping at the bit to target companies failing to meet the new, stricter compliance requirements.

The new Federal Communications Commission (FCC) rules under the Telephone Consumer Protection Act (TCPA) will prohibit any marketing calls or text messages made using an automated dialing system, or "autodialer," to any cell phone number absent the cell phone subscriber's "prior express written consent." This consent must be made in writing, bear the consumer's signature, and list the phone number to be called or texted. Certain specific disclosures must also be made at the time consent is secured.

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The FCC has made it clear, the authors write, that as of October 16 companies may no longer rely on previous non-written forms of prior express consent to make such calls. Instead, they must secure new consent from each consumer, and that consent must conform to the revised rules.

[Click here](#) to read the full text of the column and learn what types of calls are exempt from the new rules, potential obstacles to obtaining sufficient consent, and what outstanding questions make complying with the rules more difficult.

FDA Targets Safety of Imported Food

In late July, the U.S. Food and Drug Administration (FDA) published two proposed regulations intended to ensure that imported food meets the same safety standards as food grown and produced in the United States. A recent client alert by Venable attorneys [Ashley W. Craig](#), [Claudia A. Lewis](#), [Lindsay B. Meyer](#), [Michelle C. Jackson](#), and [Matthew R. Rabinowitz](#) provides analysis of the proposed rules.

The first proposed rule calls for the establishment of a Foreign Supplier Verification Program (FSVP). Under the proposed FSVP rule, importers would be required to develop a plan for imported food that includes identifying likely hazards associated with each food, and implementing plans to ensure those hazards are being adequately controlled.

The second proposed rule seeks to establish a program for the accreditation of third-party auditors, also known as certification bodies, that would conduct food safety audits and issue certifications of foreign facilities, and the foods for humans and animals they produce. The FDA plans to use third-party certifications for both its Voluntary Qualified Importer Program (VQIP) and the FSVP. Interested parties have until November 26, 2013 to provide comment on the proposed rules.

[Click here](#) to read Venable's detailed analysis of the proposed rules.

[Click here](#) to read the full text of the proposed FSVP rule.

[Click here](#) to read the full text of the proposed rule that would establish an auditor accreditation program.

Upcoming Events

[Council for Responsible Nutrition Workshop and Conference 2013 - Park City, UT](#)

September 18-21, 2013

The Council for Responsible Nutrition (CRN) is the leading trade association representing dietary supplement manufacturers and ingredient suppliers. During CRN's dietary supplements conference, Venable partner [Claudia A. Lewis](#) will join a panel to discuss "How Non-compliance with FDA Regulations Can Result in a Private Cause of Action for Consumers." Venable is also a proud sponsor of the invitation-only Board of Directors dinner.

[Click here](#) to learn more.

[NAD/CARU/ERSP Annual Conferences - New York City](#)

September 30-October 2, 2013

The Advertising Self-Regulatory Council establishes the policies and procedures for advertising industry self-regulation, including the National Advertising Division (NAD), Electronic Retailing Self-Regulation Program (ERSP), and Children's Advertising Review Unit (CARU). Venable attorney [Mikhia E. Hawkins](#) will join a panel during the ERSP Summit titled "Direct Response: A Year in Review & What's to Come." Timely topics that will be discussed include recent developments and issues in direct response advertising and marketing, various considerations of claim substantiation, and self-regulation's role in the evolving electronic retailing industry.

[Click here](#) to learn more.

[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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