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Honors and AwardsTop ranked in *Chambers USA*
2012**News****CFPB Turns One, Announces First Enforcement Action**

Last weekend marked the first anniversary of the Consumer Financial Protection Bureau (CFPB). Over the past several weeks, the CFPB has unveiled numerous regulatory proposals and initiatives in such areas as private student loans, mortgage disclosures, and credit reporting agencies. Moreover, the media's coverage of the CFPB has taken a new tack as information about its initial investigations, exams, and enforcement activity has become public. These investigations and the CFPB's enforcement actions will have long-term consequences for their targets and will be an important indicator of its approach to consumer protection in the future.

Last week, the CFPB gave industry a taste when it issued a compliance bulletin asserting that institutions will be held responsible for deceptive marketing practices and the actions of their third-party vendors. The CFPB stressed that companies engaging in deceptive practices will be expected to refund fees paid by consumers and pay an appropriate penalty, particularly in cases in which such deceptive practices are widespread.

The CFPB's work in its first year and more recent announcements underscore the importance of the careful development of specific products and services, policies and procedures, employee incentive plans, advertising and marketing, service provider compliance requirements, fulfillment, quality assurance, monitoring, training, and handling of complaints.

[Click here](#) to read the CFPB's compliance bulletin.

[Click here](#) to visit Venable's collection of articles analyzing developments at the CFPB over the past year.

FTC Weighs in on FCC's Consideration of Mobile "Cramming"

The Federal Trade Commission (FTC) announced this week that it had provided comment to the Federal Communications Commission (FCC) about the "cramming" of unauthorized charges on wireless telephone bills. According to its press release, the FTC told the communications regulator that "cramming" poses a serious problem.

The FTC's comment noted that both the FTC and the FCC have received and reviewed thousands of complaints about unauthorized third-party charges on wireless bills. In fact, the FTC claimed in its comment to have launched at least 24 investigations involving wireless cramming. Those are in addition to a number of state AG investigations of wireless cramming, some of which have resulted in multi-million dollar settlements. Despite this application of state and federal enforcement muscle, the FTC stated in its comment that the problem is only likely to grow.

The comment also noted that there are a number of legitimate uses of third-party charges on wireless bills, such as serving as a conduit for text message-based charitable fund raising. Although the comment stopped short of calling for a full ban or default blocking of third-party charges, the FTC does believe that wireless providers should be required, at a minimum, to give customers the option to block all third-party charges from their bills.



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

California Announces Privacy Enforcement and Protection Unit

In a July 19 press release, California Attorney General Kamala D. Harris announced the formation of a California Privacy Enforcement and Protection Unit. The unit, which will be part of the state Department of Justice's eCrime Unit, will be charged with protecting consumer and individual privacy through civil prosecution of state and federal privacy laws, educating consumers and forging partnerships with industry.

The creation of the Privacy Unit is just the latest California initiative intended to protect consumer privacy. The state has also created a coalition of leading mobile and social application platforms to improve privacy protections for consumers in California and around the globe. Amazon.com, Apple, Facebook, Google, Hewlett-Packard, Microsoft and Research in Motion have all signed onto that initiative.

[Click here](#) to read the press release announcing the formation of the unit.

Microsoft Setback in Xbox Text Messaging Suit

In a class action against Microsoft Corp. alleging that the company sent unlawful text messages promoting its Xbox game console, a federal district court recently ruled that the plaintiff did not have to allege that he was charged for the text message he received in order to have standing to sue.

The plaintiff alleges that Microsoft sent the text messages to consumers in violation of the Telephone Consumer Protection Act (TCPA), which prohibits calls "to any telephone number assigned to a...cellular telephone service...or any service for which the called party is charged to make a call." One federal court of appeals has held that text messages are "calls" subject to the TCPA.

Microsoft moved to dismiss the suit on the basis that the plaintiff lacked standing because he did not allege that he was charged for the text message. The district court denied the motion, finding that the term "charged" in the relevant TCPA provision applies to "cellular telephone service," not to "call." Thus, according to the court, the plaintiff demonstrated standing by alleging that he was charged for his cellular telephone service and did not have to allege that he was charged specifically for the allegedly unlawful text message or otherwise allege that he suffered economic harm.

[Click here](#) to read the court's opinion in the case.

Analysis

Class Actions "Piggybacking" FTC Enforcement Face Setback

There is no private right of action for violations of the FTC Act, writes Venable partner [Leonard L. Gordon](#) in a recent post to Venable's advertising law blog, www.allaboutadvertisinglaw.com. However, he says, aggressive plaintiffs' lawyers often try to "piggyback" on FTC enforcement actions by bringing private class actions premised on the same conduct as the FTC action.

His post details a recent case in which Nestlé secured summary judgment and dealt a setback to similar "piggyback" suits.

Gordon's post details a consolidated class action that followed close on the heels of the FTC's 2010 settlement with Nestlé over claims made about the company's BOOST Kid Essentials drink. All parties and the court agreed that the state statutes under which the suits were brought did not provide for a claim based on a lack of prior substantiation. Accordingly, the plaintiffs argued that they were not bringing a prior substantiation claim, like the FTC, but were instead alleging that Nestlé's claim that the health benefits were "clinically shown" was false.

After reviewing the expert opinions both parties submitted, the judge in the case concluded that "[p]laintiffs do not present evidence that Nestlé actually lacks scientific support for its 'clinically shown' claims or that such support does not exist; they argue that this support should have been stronger."

Finding that the plaintiffs' claims were premised on a lack of substantiation not falsity, the judge granted summary judgment.

[Click here](#) to read Gordon's full post on www.allaboutadvertisinglaw.com.

Jonathan Pompan Comments on CFPB's First Year

Venable attorney [Jonathan L. Pompan](#) was quoted in a July 20 *Blog of The Legal Times* story about the first anniversary of the CFPB.

"They're not messing around," Pompan told the publication. "A year ago, we said there was a new sheriff in town. It's not just a sheriff — it's an army." While the CFPB has been a political target, it has made considerable progress in executing its mission, growing its staff, rolling out regulatory proposals, launching investigations and enforcement.

Speaking about the CFPB's multifaceted approach to drawing attention to consumer protection issues in nonbank areas such as prepaid cards, mortgages, small dollar lending, money transmission, private student loans, credit reporting agencies, debt relief services, and debt collection, Pompan said that the CFPB's "consistency in approach rivals a political campaign." He added, the CFPB has embraced "the power of the bully pulpit," and noted that "non-rulemaking guidance and other pronouncements seem to be far more prevalent than actual substantive rules."

[Click here](#) to read all of Pompan's comments in the story.

Upcoming Events

[Webinar: How Nonprofits Can Raise Money and Awareness through Promotional Campaigns without Raising Legal Risk](#)

August 2, 2012

Please join Venable for a complimentary luncheon and program/webinar, moderated by Venable partner [Jeffrey S. Tenenbaum](#). Venable partner [Melissa Landau Steinman](#) and Venable attorney [Kristalyn J. Loson](#), each well-versed in the related areas of promotions and charitable fundraising, will help explain the myriad of legal and regulatory issues involved in promotional and fundraising campaigns, as well as the latest developments in the area. The luncheon portion will take place from 12:00 p.m. - 12:30 p.m. EDT, and the program/webinar portion will take place from 12:30 p.m. - 2:00 p.m. EDT.

Please RSVP by July 27. To RSVP, please [click here](#).

[American Bar Association Annual Meeting - Chicago](#)

August 2-7, 2012

Venable's attorneys will present sessions at this conference, which provides top-notch continuing education to the nation's lawyers. Please join Venable partner [Ralph S. Tyler](#) as he presents "Overriding the Experts: Executive Rejection of Administrative Agency Expertise." Also, Venable partner [Amy Ralph Mudge](#) will moderate a panel discussion titled "Government Cases and Class Actions: Making and Breaking the Links."

[2012 Electronic Retailing Association D2C Convention - Las Vegas](#)

September 11-13, 2012

Venable is a proud sponsor of the ERA D2C Convention. The ERA is the only trade association in the U.S. and internationally that represents leaders of the direct-to-consumer marketplace, which includes members that maximize revenues through direct-to-consumer marketing on television, online, mobile and on radio. Please visit the attorneys of our [Advertising and Marketing Group](#) at booth #915.

Two Venable attorneys are presenting educational sessions at ERA D2C. Join Venable partner [Jeffrey D. Knowles](#) as he presents "Driving Change in Electronic Retailing: Enforcement, Self-Regulation and Legislation." Venable partner [Gregory J. Sater](#) will moderate a panel entitled "Riding the Social Media Roller Coaster."

To obtain a complimentary exhibitor-hall pass that will allow you to attend the expo as a guest of Venable, please click [here](#) and register, using the code **VBND3607**.

[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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