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News**Email Marketers Win Decisive Legal Victory**

Recently, a jury considering *Beyond Systems v. Kraft Foods* unanimously found that anti-spam plaintiff Beyond Systems, Inc., an alleged Internet service provider, is "primarily or substantially" engaged in filing anti-spam lawsuits. Therefore, Beyond Systems is not a *bona fide* "Electronic Mail Service Provider" under California's anti-spam statute, or a *bona fide* "Interactive Computer Service Provider" under Maryland's anti-spam statute. This jury finding is important because it paves the way for the trial judge to rule as a matter of law that service providers that are "primarily or substantially" engaged in filing anti-spam litigation cannot sue under these state statutes. Such a ruling would, in effect, require plaintiffs to be *bona fide* to maintain state law causes of action in addition to federal CAN-SPAM lawsuits, and thereby provide a complete defense to email marketers sued for violations of state anti-spam laws.

[Click here](#) to read a detailed account of the case.

Analysis**Why Care About Counterfeiting?**

If you are selling a successful product via direct response, write Venable attorneys **Gregory J. Sater** and **Christopher S. Crook** in the July 2012 edition of *Electronic Retailer* magazine, it is being counterfeited somewhere. The pair write that marketers have transitioned from an "If I get counterfeited" world to a "When I get counterfeited" world. The article points out that "every company must decide for itself whether and to what extent to register its trademarks, copyrights and patents and to fight the counterfeiters" based on those intellectual property rights. It also shares insights from a number of leading direct marketing executives who discuss how their companies have combatted counterfeiting.

[Click here](#) to read the article, which begins on page 26.

Some Changes to New Jersey's Gift Card Law Take Effect September 1

New Jersey's unclaimed property law was amended on June 29 when Senate Bill 1928 (SB1928) was signed into law. In a recent client alert, Venable attorneys **Melissa Landau Steinman** and **Erin E. Seder** write that although the new law was intended to fix some of the infirmities of the old unclaimed property law, the new law's data collection provision has the gift card community gearing up for a legal challenge. The new law, which was closely watched by issuers of gift cards, provides a five-year abandonment period, a new "cash-back" provision, prohibition of post-purchase fees and expiration dates, disclosure requirements and the collection of ZIP codes from purchasers. Some parts of the new law will go into force as early as September 1, 2012.

[Click here](#) to read the client alert, which summarizes the provisions of SB1928.

What is the FTC "Up To?"

On June 29, the Federal Trade Commission (FTC) released the results of a recent mail intercept survey it conducted in connection with an investigation into several window manufacturers' "up to 47 percent"

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energy savings claims. The resulting **settlement**, which was announced in February 2012, required that the companies not make such "up to" claims unless "all or almost all" consumers are likely to achieve the maximum savings.

In a recent post to Venable's advertising law blog, www.allaboutadvertisinglaw.com, Venable partners **Leonard L. Gordon, Amy Ralph Mudge** and **Randal M. Shaheen** write that although the FTC stated in its analysis of the proposed settlement that "the FTC's complaint and the proposed consent order should not be interpreted as a general statement of how the Commission may interpret or take other action concerning representations including the words 'up to' for other products or services in the future," the FTC may be rethinking that position.

The FTC's press release on the survey stated it "believes the report will help guide advertisers to avoid the use of misleading 'up to' claims. It reinforces the FTC's view that advertisers using these claims should be able to substantiate that consumers are likely to achieve the maximum results promised under normal circumstances." In other words, Gordon, Mudge and Shaheen write, maybe the FTC's consent order against the window manufacturers actually was intended to be a general statement regarding "up to" claims for other products and services.

[Click here](#) to read the complete post on www.allaboutadvertisinglaw.com.

[Click here](#) to read the FTC's press release and access a copy of the report.

Change to CBP Policy Could Make Post-Import Pricing Adjustments Easier

A large percentage of imports into the United States involve trade between related parties. In fact, related-party trade accounted for over 40 percent (\$1,295 billion) of the total goods imported into the United States during 2010. For tax purposes, U.S. companies typically implement formal intercompany transfer pricing policies to ensure that the relationship of the parties does not affect the price of intercompany sales. To replicate the price of an arm's-length transaction, these transfer policies often provide for various post-import adjustments to the transfer price.

Venable attorneys **Lindsay B. Meyer, Carrie A. Kroll** and **Jana del-Cerro** write in a recent client alert that it may become easier for some companies importing goods from related foreign parties to implement post-import pricing adjustments required under transfer pricing policies and advanced pricing agreements. This change is due to a May 30, 2012 ruling issued by U.S. Customs and Border Protection (CBP). The ruling, which represented a significant modification of CPB's long-standing approach to such transactions, goes into effect on July 30, 2012.

[Click here](#) to read the full alert.

Upcoming Events

ACC Quick Hit: "Geolocation Data Privacy: Where Are We, and Where Are We Going?"

July 19, 2012

Geolocation data supports a range of exciting products and services, but raises privacy questions. In this Quick Hit, Venable attorneys **Nora E. Garrote** and **Julia Kernochan Tama** will provide an up-to-the-minute overview of the evolving legal and policy landscape for commercial use of geolocation data. This webinar will occur on Thursday, July 19 at 12:00 p.m. EDT, and it is hosted by the Association of Corporate Counsel's IT, Privacy and e-Commerce Committee, of which Venable is the exclusive sponsor.

ACC members may [click here](#) to register.

If you are not an ACC member and wish to participate, please contact: Paul Goatley, Legal Resources Coordinator, at goatley@acc.com and mention Venable to receive an invitation to participate.

LeadsCon East 2012 - New York

July 24-25, 2012

LeadsCon is the pioneering conference and summit for the online lead generation and broader customer acquisition industry. Venable attorney **Jonathan L. Pompan** will moderate a discussion entitled "Co-reg, Destination Sites, and Up-sells, 'Oh My!'" on Wednesday, July 25 from 11:30 a.m. - 12:00 p.m. EDT. A panel of leading advertisers will discuss the challenges of online and telephonic lead generation.

For registration information, please [click here](#).

15th Annual NBJ Summit - Dana Point, CA

July 24-27, 2012

Venable is a proud sponsor of the 2012 NBJ Summit, hosted by *Nutrition Business Journal* and New Hope Natural Media. Please join Venable partner **Jeffrey D. Knowles** and Venable partner and former FDA Chief Counsel **Ralph S. Tyler** on Friday, July 27 from 9:00 a.m. - 11:40 a.m. PDT. Their session and panel discussion will provide insiders' views of regulatory activity by the FDA and FTC as well as predictions for the future.

3rd Annual DRMA Summer Bash - Irvine, CA

July 26, 2012

Venable is a proud sponsor of the Direct Response Marketing Alliance's Summer Bash. Join the attorneys of Venable's **Advertising and Marketing Group** for an evening of wine tasting and networking, held at the Shady Canyon Country Club in Irvine, CA.

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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