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## Latest News and Alerts

Venable attorneys produce periodic alerts and newsletters covering a variety of topics and practice areas. For your convenience, we have assembled below a collection of the latest alerts and newsletters from August 2013. To view the full text of an article, please click on the title of the piece.

### [What to Expect When You're Selling Your Company – Indemnification](#)

When it comes to negotiating a purchase agreement, one of the key components is indemnification, which is a contractual obligation by one party to reimburse another party for its losses. Although the concept of indemnification may not be new to you, it has its own characteristics, rules and implications in the context of selling a business.

**Authors:** [James P. Dvorak](#), [Allison C. Fishkind](#), and [Erin E. Segreti](#)

### [Association Membership and Program Restrictions and the Antitrust Laws: Don't Stumble Out of the Gate](#)

Trade and professional associations benefit society by promoting various industries, professions, and other interests. To realize their goals, however, associations must sometimes limit membership in the association or association-sponsored programs. A recent court decision, *Abraham v. American Quarter Horse Association*, highlights how association restrictions can sometimes run afoul of the antitrust laws, especially where the restrictions are intended to, or have the effect of, foreclosing a competitor's ability to compete in the market.

**Authors:** [Andrew E. Bigart](#), [Robert P. Davis](#), and [Jeffrey S. Tenenbaum](#)

### [CFPB: July Roundup](#)

Happy Second Birthday, CFPB! In July, the Bureau turned two years old. In that time, the Bureau has held field hearings in over 12 cities, received over 175,000 consumer complaints, and returned over \$430 million to consumers. And, as the Bureau promises...they are just getting started.

**Issue Editor:** [Suzanne Fay Garwood](#)

### [The Download - August 2013](#)

Featuring articles on new mobile guidance from the Digital Advertising Alliance; privacy, cybersecurity, and breach notification law updates from Capitol Hill; new additions to the FTC's COPPA FAQ guidance; and the September compliance deadline for new HIPAA regulations.

**Issue Editors:** [Stuart P. Ingis](#) and [Michael A. Signorelli](#)

### [FDA Serves Up Another Helping of Draft Guidance on Medical Foods](#)

On August 13th, the Food and Drug Administration released a second version of its draft guidance on medical foods. The draft guidance, "Frequently Asked Questions About Medical Foods; Second Edition," addresses medical food labeling, physician supervision, and the scope of permissible diseases or conditions that medical foods may be labeled or marketed to manage.

**Authors:** [David G. Adams](#), [Todd A. Harrison](#), [Claudia A. Lewis](#), [Ralph S. Tyler](#), [Michelle C. Jackson](#), [John G. Moore](#), and [Erin E. Seder](#)

### [Federal Grant & Contract News for Nonprofits - August 2013](#)

Several matters have recently arisen which are especially important for organizations that submit invoices or claims for funds from federal and/or state governments. As the current government fiscal year draws to a close, these events should remind nonprofits of the need to ensure strict compliance with federal procurement and grant requirements. Over the past several years, the federal government has utilized the civil False Claims Act with increasing frequency, and it appears that many states are looking to follow suit.

**Authors:** [Dismas Locaria](#), [Melanie Jones Totman](#), [Elizabeth A. Buehler](#), and [Jeffrey S. Tenenbaum](#)

### [Food for Thought: Understanding FDA's Proposed Rules for Importers of Food and Dietary Supplements and How They May Impact Your Business](#)

With approximately 15% of all food consumed in the United States coming from overseas, the U.S. Food and Drug Administration has renewed its focus on imported food safety and now seeks to place risk-based preventive controls squarely on the importing community. Comments on these Proposed Rules are actively solicited by the FDA. If you want to shape how these rules may be finalized, contact us to discuss how your comments may be submitted and reviewed by FDA before the November 26, 2013 deadline.

**Authors:** [Lindsay B. Meyer](#), [Ashley W. Craig](#), [Matthew R. Rabinowitz](#), [Claudia A. Lewis](#), [Michelle C. Jackson](#), [Todd A. Harrison](#), [Ralph S. Tyler](#), and [John G. Moore](#)

#### **IP Buzz - August 2013**

Featuring articles on the legal use of marks in commerce, a patent troll suing The Gap over gift cards, patent term adjustment and the *Exelisis* cases, and Venable's recent *amicus brief* on behalf of the Biotechnology Industry Organization.

**Issue Editors:** [Martin L. Saad](#), [Meaghan Hemmings Kent](#), and [Elissa Brockbank Reese](#)

#### **New Efforts in Bilateral Brand Protection: Positive Steps by Chinese and U.S. Authorities Demonstrate Partnership and Progress**

The U.S. Joint Strategic Plan on Intellectual Property Enforcement was published recently and there are already encouraging signs of progress on the global brand protection front between the U.S. and China. On August 2nd, Shanghai No. 1 Intermediate People's Court ruled in favor of a company protecting its trade secrets against misappropriation by a former employee. The industry-friendly decision came just two days after U.S. Customs and Border Protection announced the seizure of more than 243,000 counterfeit consumer electronics, resulting from a successful joint enforcement operation with China, often considered the world's most prolific violator of intellectual property rights.

**Authors:** [Lindsay B. Meyer](#), [Justin E. Pierce](#), [Marcella Ballard](#), and [Amanda C. Blunt](#)

#### **No Bar is Off-Limits: SEC Enforces 2004 Order Barring Accountant**

In a rare and aggressive move, the SEC recently sought a court order enforcing an almost decade-old SEC suspension of an accountant and forcing the accountant to disgorge over half a million dollars of compensation earned for providing prohibited services (plus pre-judgment interest).

**Authors:** [Michael J. Rivera](#) and [Hillary S. Profita](#)

#### **Quickly Take Your Medicine: FDA's Secure Supply Chain Pilot Program Presents Opportunity for Expedited Imports of API and Finished Drug Products**

Taking a page from an established Customs program, importers of active pharmaceutical ingredients and finished drug products may now have the opportunity to become eligible for expedited entry into the United States. The FDA's notice of a new Secure Supply Chain Pilot Program will enable qualified importers to receive a "May Proceed" without human entry review or examination for APIs and finished drug products offered for import into the United States.

**Authors:** [David G. Adams](#), [Lindsay B. Meyer](#), and [Matthew R. Rabinowitz](#)

#### **Should I Eat That? New Rules Propose Significant Requirements on Importers of Food and Dietary Supplements**

As an ever-increasing amount of food we eat is from overseas, the challenge of assuring that imported food meets the same safety standards as food grown and produced in the United States continues. On July 29, 2013, the U.S. Food and Drug Administration published two proposed regulations aimed at addressing this challenge.

**Authors:** [Lindsay B. Meyer](#), [Ashley W. Craig](#), [Matthew R. Rabinowitz](#), [Claudia A. Lewis](#), and [Michelle C. Jackson](#)

#### **The SUSPEND Act: Fixing What Isn't Broken in the Federal Government's Suspension and Debarment System**

On February 7, 2013, House Oversight Chairman Rep. Darrell Issa released a discussion draft of the SUSPEND Act as a means to protect taxpayers from "fraudsters, criminals, or tax cheats receiving taxpayer money through grants or contracts." To achieve this goal, the SUSPEND Act proposes consolidating, and thereby terminating, more than 41 civilian agency suspension and debarment offices and functions into one centralized board, the Board of Civilian Suspension and Debarment, which would be located within the General Services Administration.

**Authors:** [Dismas Locaria](#) and [Elizabeth A. Buehler](#)

#### **Advertising News & Analysis**

- **August 1, 2013 Edition**

Featuring articles on promotion rules in a recent Taylor Swift contest, scrutiny of "number 1" claims, effectiveness of website disclaimers, and the CFPB's rulemaking agenda.

- **August 8, 2013 Edition**

Featuring articles on challenges to "up to" claims, new federal rules for marketing to cell phones,

and the safety of imported food.

- **August 15, 2013 Edition**  
Featuring articles on NAD using the FTC's muscle to encourage self-regulation, Venable's decisive victory for email marketers and advertisers, the FDA's proposed rules for food importers, and the "puffery" defense in advertising claims.
- **August 22, 2013 Edition**  
Featuring articles on failed patent troll gift card suits, American and Chinese cooperation in brand protection, and tips for mobile marketers.
- **August 29, 2013 Edition**  
Featuring articles on five common misconceptions in advertising law, the FDA's new medical food guidance, new rules for Facebook promotions, and the NAD referring leading brands to the FTC for declining to participate in self-regulation.

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## Upcoming Events

### **["Antitrust Update for In-House Counsel" for the ABA Corporate Counseling Committee](#)**

**September 10, 2013**

**12:00 p.m. - 1:00 p.m. ET**

Please join Venable attorneys for the American Bar Association Corporate Counseling Committee's monthly Antitrust Update for In-House Counsel, a telephonic committee program. This program continues the ABA's popular monthly series of brown bags in which antitrust practitioners report on the most recent developments around the world at antitrust agencies and in the courts. The program will last approximately one hour, including a Q&A at the end. Venable will present this month's update.

[Click here to register.](#)

### **[Keeping Up with Technology and the Law: What Your Nonprofit Should Know about Apps, the Cloud, Information Security, and Electronic Contracting](#)**

**September 18, 2013**

**12:00 p.m. - 2:00 p.m. ET**

Once considered "buzzwords" in the technology industry, these terms are becoming commonplace in today's world. Understanding new technologies and how they can and should impact the operation of your nonprofit organization are more important than ever. In this program, we will address some of the hottest advances in general commercial technologies, including mobile applications, the "cloud," information security, and electronic contracting, and will highlight the risks and importance of each from a legal perspective. We will focus on four key areas with a special focus on how these issues play out in the nonprofit community.

[Click here to register.](#)

### **[Time to Update Your Internal Controls – Take Steps Now to Limit Liability from Severe Civil and Criminal Penalties](#)**

**September 19, 2013**

**8:00 a.m. - 9:30 a.m. ET**

Almost three years after the enactment of the Small Business Jobs Act of 2010, the SBA has issued the final rule implementing a critical component that establishes severe and unforgiving liability for government contractors when the size or status of a contractor or subcontractor is misrepresented. An inaccurate size or status representation is now deemed by law to be willful and intentional, raising the possibility that your company's lack of adequate attention and due diligence may result in substantial civil and criminal penalties. To ensure that there are serious consequences, the rule imposes an automatic "presumption of loss," which means that your company may owe the United States millions of dollars if you receive a small business contract and are not actually small, regardless of whether the government is injured.

[Click here to register.](#)

### **[Cyber Sticks and Carrots: How the NIST Cybersecurity Framework, Incentives, and the SAFETY Act Affect You](#)**

**September 25, 2013**

**12:00 p.m. - 2:00 p.m. ET**

As cyber attacks increase, they continue to affect more businesses in new and harmful ways. Are you prepared? Join Former Deputy Secretary of Homeland Security Jane Holl Lute, the President and CEO of the Council on Cybersecurity, and Venable's own cybersecurity practitioners for a presentation on key insights and industry updates.

[Click here to register.](#)

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## Honors and Awards

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Venable's Corporate Group attorneys have been [nationally and regionally ranked](#) in *Chambers USA*, *Chambers Global*, *Super Lawyers*, *Legal 500*, and *U.S. News - Best Lawyers*.

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