



November 29, 2012

**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

**Marcella Ballard**  
mballard@Venable.com  
212.370.6289

**Amy Ralph Mudge**  
amudge@Venable.com  
202.344.4743

**Randal M. Shaheen**  
rmshaheen@Venable.com  
202.344.4488

**Victoria R. Danta**  
vrdanta@Venable.com  
212.370.6248

**Honors and Awards**

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**News**

## Hotel Operators Receive FTC Warning Letters About Pricing Practices

The Federal Trade Commission (FTC) announced on November 28 that it sent warning letters to 22 hotel operators notifying them that their online reservation sites may violate the law by providing a deceptively low estimate of the total cost of a one-night stay in a hotel room. The FTC did not disclose the names of the hotel operators that received the letters.

According to the FTC's press release, the warning letters are the result of consumer complaints that were raised during the FTC's May 2012 conference on so-called "drip pricing." Drip pricing occurs when companies advertise only a portion of a product's total price and reveal additional charges as the customer goes through the buying process.

The warning letters mention mandatory "resort fees" and other required charges for amenities such as newspapers and the use of fitness facilities as common consumer complaints. The letters also state that consumers often did not know they would be required to pay the fees in addition to the quoted hotel rate. In the letters, the FTC encouraged the companies to review their websites and ensure that their ads accurately represent the total price consumers can expect to pay.

[Click here](#) to read the FTC's press release and view a sample warning letter.

[Click here](#) to view the FTC's drip pricing conference website.

## FTC and CFPB Tell Mortgage Advertisers to Watch Their Ads

On November 19, the FTC announced that after reviewing hundreds of mortgage advertisements, it sent letters to 20 companies, including real estate agents, home builders, and lead generators, warning them that their ads may be deceptive. The FTC also urged the companies to review their advertisements for compliance with the Mortgage Acts and Practices Advertising Rule, also known as Regulation N, and the FTC Act. The FTC did not reveal the identities of the companies receiving warning letters.

The FTC sent the letters in coordination with the Consumer Financial Protection Bureau (CFPB), which issued warning letters to approximately one dozen additional companies. The CFPB sent its warning letters to mortgage brokers and lenders. According to the FTC's press release, both agencies have opened enforcement investigations of other advertisers that may have violated federal law.

The Mortgage Acts and Practices Advertising Rule prohibits material misrepresentations in advertising or any other commercial communication regarding consumer mortgages. The FTC and the CFPB share enforcement authority over non-bank mortgage advertisers, such as mortgage lenders, brokers, servicers, and advertising agencies.

After reviewing more than 800 mortgage-related ads, the FTC and CFPB found several recurring advertising practices they found to be troubling. These included:

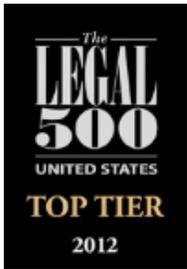
- Advertisements offering a very low "fixed" mortgage rate, without discussing significant loan terms.
- Advertisements containing statements, images, symbols, and abbreviations suggesting that an



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



Top-Tier Firm *Legal 500*



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advertiser is affiliated with a government agency.

- Advertisements "guaranteeing" approval and offering very low monthly payments, without discussing significant conditions on these offers.

In conjunction with of the announcement of the warning letters, the FTC also released a series of mock mortgage advertisements that illustrate the recurring practices the FTC and CFPB identified.

[Click here](#) to read the FTC's press release announcing the warning letters.

[Click here](#) to view the FTC's mock mortgage advertisements.

## Analysis

# Differentiation Is Not Just in the Eye of the Marketer

In the hyper-competitive direct-response marketplace, differentiation can be the key to a product's success or failure, write Venable partners [Jeffrey D. Knowles](#), [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) in the November issue of *Response Magazine*.

They write that products that are "new," "first," "fastest" or "the only" can make the cash register ring. However, consumers, competitors and regulators frequently question whether a product truly lives up to the differentiators marketers use to describe the product.

In the article, the trio analyzes a series of recent decisions by the National Advertising Division of the Council of Better Business Bureaus involving different types of differentiation claims and discusses the guidance the decisions provide to marketers.

[Click here](#) to read the full text of the article.

# Twitter Revises Copyright and DCMA Takedown Policy

Twitter recently announced an important change to its copyright and Digital Millennium Copyright Act (DCMA) takedown policy, write Venable attorneys [Marcella Ballard](#) and [Victoria R. Danta](#) in the November edition of Venable's *IP Buzz* newsletter. With the change, Twitter has completely altered its process for responding to and resolving copyright infringement claims. According to the company, the change is designed to promote transparency in the resolution process and encourage just and expedient resolutions of valid copyright infringement complaints.

Under Twitter's original policy, allegedly infringing tweets were removed upon receipt of a valid copyright complaint; if the user provided a valid counterresponse, Twitter would manually repost the tweet to the user's account. Under the new policy, however, Twitter will replace allegedly infringing tweets with a message explaining that the tweets were "withheld in response to a report from the copyright holder," with a link to the changed policy.

Although critics have argued that users may be confused and frustrated by the new policy, many internet rights advocates have praised Twitter and expect the changes to result in more just, expedient resolutions of valid copyright complaints.

[Click here](#) to read the full text of the article by Ballard and Danta.

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## Upcoming Events

"Telemarketing, Email and Text Message Marketing: Tips to Avoid Lawsuits," [LeadsCouncil Webinar](#)  
December 11, 2012

**Jonathan L. Pompan** will moderate this discussion with **Ari N. Rothman** and **Molly T. Cusson**, two attorneys with extensive experience advising lead generators and affiliate markets on legal and regulatory matters. The session will address the effective management of legal and regulatory risks when marketing via telemarketing or email and text messaging. It will also provide pointers on negotiating contract protections, shoring up due diligence, minimizing compliance gaps, and what to do when your company is involved in a lawsuit.

Please [click here](#) for more information.

#### **Affiliate Summit West 2013 - Las Vegas**

January 13-15, 2013

Join Venable attorneys at this conference which provides educational sessions on the latest affiliate-marketing industry issues and fosters a productive networking environment for affiliate marketers.

To register, please [click here](#).

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