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Honors and Awards

2011 *Chambers USA*
 Award for Excellence
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Special Alert: Planning to attend ERA's D2C Conference in Las Vegas? Venable friends and clients, who have not yet registered, are eligible for a free exhibit hall pass or \$100 discount off an all-access pass. [Click here](#) to register. We look forward to seeing you at the show!

News

Judge Greenlights Groupon False Advertising Class Action

On Wednesday, U.S. District Judge Phyllis Hamilton rejected Groupon's request for dismissal of a proposed false advertising class action, ruling that some parts of the suit against the daily deal leader could proceed. In the suit, a San Francisco-based tour company alleges that Groupon buys up Google Adwords related to tours of San Francisco attractions such as Alcatraz prison. The tour company maintains that Groupon's actions constitute bait and switch advertising because after consumers click the tour-related link, they are taken to a website that does not feature coupons for any tours. The company also alleges that the practice drives up the cost of tour-related Adwords while diminishing the prominence of the company's ads in Google searches.

[Click here](#) to read Reuters coverage of the case.

[Click here](#) to view the complaint.

Plaintiffs Give NASCAR the Black Flag in SMS Marketing Class Action

NASCAR was recently hit with a class action alleging that it sent unsolicited text message advertisements to consumers' cell phones. The complaint, which was filed on August 10 in the Southern District Court of California, alleges that NASCAR violated the federal Telephone Consumer Protection Act (TCPA) by sending – via an automatic telephone dialing system – text messages to consumers' cell phones advertising the NASCAR Sprint Cup Mobile smartphone application without the recipient's prior express consent. According to the complaint, the plaintiff replied "End" to the text message to opt-out of receiving future texts from NASCAR, and subsequently received another text message from NASCAR stating, "Thanks. You have been removed from our Device Education SMS program." The plaintiff claims that the opt-out confirmation text constitutes a separate violation of the TCPA.

[Click here](#) to view the complaint.

FTC Decides Not to Investigate Ashton Kutcher Over *Details* Issue

On Friday the FTC stepped back for statements made earlier in the week that it might investigate television actor Ashton Kutcher for potential violation of the FTC's *Guides Concerning the use of Endorsements and Testimonials in Advertising*. Last week, an issue of *Details* magazine that was guest edited by Kutcher profiled more than a dozen technology companies in which Kutcher is an investor. Kutcher drew criticism for not fully disclosing his interests in the companies profiled.

[Click here](#) to read coverage of the story in the *New York Times*' Bits Blog.

Upcoming Events

2011 ERA D2C Convention - Las Vegas

September 13-15

Visit Venable at Booth 909. For a free show hall pass or \$100 off an all access pass, [click here!](#)

For more information about Venable's award-winning Advertising and Marketing practice, please visit our website at www.Venable.com/Advertising-and-Marketing.

Anti-Counterfeiting & Brand Protection - New York City

September 26-28

Marcella Ballard will be speaking on the panel *Protecting your Brand Globally through IP Best Practices*.

NAD Annual Conference 2011 - New York City

October 3-4

Thomas A. Cohn will be speaking on social media issues including burgeoning issues such as publicity rights, blogs, branded entertainment, endorsements and testimonials as well as providing guidance on understanding regulatory developments and best practices.

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