

**Editors:**

**Jeffrey D. Knowles**  
[jdknowles@Venable.com](mailto:jdknowles@Venable.com)  
 202.344.4860

**Gary D. Hailey**  
[gdhailey@Venable.com](mailto:gdhailey@Venable.com)  
 202.344.4997

**In This Issue:**

**Jeffrey D. Knowles**  
[jdknowles@Venable.com](mailto:jdknowles@Venable.com)  
 202.344.4860

**Gary D. Hailey**  
[gdhailey@Venable.com](mailto:gdhailey@Venable.com)  
 202.344.4997

**Melissa L. Steinman**  
[msteinman@Venable.com](mailto:msteinman@Venable.com)  
 202.344.4972

**Stephen E. Marshall**  
[semarshall@Venable.com](mailto:semarshall@Venable.com)  
 410.244.7407

**Ben D. Whitwell**  
[bwhitwell@Venable.com](mailto:bwhitwell@Venable.com)  
 310.229.9934

**Honors and Awards**

2011 *Chambers USA*  
 Award for Excellence  
 Winner



Top-Tier Firm *Legal 500*



Top-ranked in *U.S. News and World Report*

**SPECIAL DISCOUNT:** We're pleased to offer Venable clients and friends a special discount on registration at the Promotion Marketing Association's Annual Meeting. Please use the code: vnblelawguest2011 when registering to receive \$100 off. [Go here](#) for more information and to register.

**News****FTC Proposes Amendments to Telephone and Catalog Sales Rule**

This week, the FTC announced several proposed amendments to the Mail or Telephone Order Merchandise Rule. The Rule, which was originally issued in 1975, requires that marketers making sales via telephone or catalog must have a reasonable basis to expect that they can ship ordered merchandise in a timely manner (or 30 days if no shipping window is advertised). Under the Rule, marketers are also required to, in the event of a shipping delay, secure the customer's consent to delay shipment or provide a refund for unshipped merchandise. The FTC proposes amendments that:

- make it clear that the Rule covers all orders placed over the Internet;
- allow sellers to provide refunds and refund notices to buyers by any means at least as fast and reliable as first-class mail;
- outline sellers' obligations when buyers use payment methods not spelled out in the Rule, such as debit cards or prepaid gift cards; and
- require that refunds be made within seven working days for purchases made with third-party credit, such as Visa or MasterCard. When the seller is the creditor, the refund deadline will remain one billing cycle.

The FTC will accept public comments on the proposed amendments until December 14, 2011.

[Go here](#) to view the FTC's announcement of the proposed amendments to the Rule.

**Canadian Anti-Spam Law Could Be in Effect by End of Year**

*DM News* reports that the new Canadian anti-spam law could be in effect by the fourth quarter of 2011. Unlike the U.S. CAN-SPAM law, Canada's new law requires that all commercial emails be opt-in and threatens hefty fines for non-compliance. Industry experts interviewed in the story maintained that email marketers who are CAN-SPAM complaint and subscribe to email best practices likely have little to worry about. Those with reason to be concerned, according to the commentators, include marketers operating at the fringes of CAN-SPAM and those not subscribing to industry best practices.

[Go here](#) to read the DM News story.

**Venable Scores High-Profile Wins in False Advertising, Product Liability Cases**

Over the past seven days, Venable attorneys have delivered two high-profile wins for clients in closely watched cases. On October 4, a team including Venable partner [Stephen E. Marshall](#) secured a defense verdict in the fifth of five federal bellweather cases in the multi-district litigation concerning product liability claims about Merck's osteoporosis drug, Fosamax. Merck has won four of the five bellweather cases, which will help guide litigation in hundreds of other Fosamax cases consolidated in the Southern District of New York.

[Go here](#) to read Venable's press release about the win.

On September 27, Venable partner [Ben D. Whitwell](#) secured dismissal of a consumer class actions accusing Venable client Advanced Medical Optics (AMO) of deceptive advertising. The plaintiffs alleged AMO used misleading marketing practices to advertise a contact lens solution that was eventually voluntarily recalled. In its decision, the Ninth Circuit ruled that the plaintiffs' claims were preempted by the



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

FDA's labeling criteria.

[Go here](#) to read the Ninth Circuit's decision in the case.

## Analysis

### Text Sweepstakes Settlement Illustrates Best Practices but Answers Few Questions

A number of legal questions remain unresolved following the recent settlement of three California consumer class action suits concerning premium text messaging sweepstakes. However, as Venable's [Melissa L. Steinman](#) and [Jeffrey D. Knowles](#) write in the latest edition of the DRMA Voice, the settlement illustrates best practices that all marketers contemplating text messaging-based promotions should keep in mind.

[Go here](#) to read this piece in *Response Magazine*.

---

## Upcoming Events

### NCN at SupplySide West - Las Vegas

October 11, 2011

[Todd A. Harrison](#) will be speaking at this event.

### ACC Annual Meeting - Denver

October 23-26, 2011

[Emilio W. Cividanes](#), [Stuart P. Ingis](#), [James E. Nelson](#), and [Jeffrey S. Tenenbaum](#) will present sessions at the meeting.

### ACI Social Media - New York City

October 26-27, 2011

[Roger A. Colaizzi](#) will be speaking at this event.

### "Getting Your Fair Share: How To Prevent Royalty Underpayments Venable Video Webinar"

October 26, 2011

[Joshua J. Kaufman](#) will co-present the panel discussion.

### 33rd Annual PMA Marketing Law Conference - Chicago

November 15-16, 2011

[Thomas A. Cohn](#), [Claudia A. Lewis](#), [Roger A. Colaizzi](#) and [Melissa L. Steinman](#) will present sessions at the conference.

---

[Go 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.

If you have friends or colleagues who would find this newsletter useful, please invite them to subscribe at [www.Venable.com/subscriptioncenter](http://www.Venable.com/subscriptioncenter).

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | [www.Venable.com](http://www.Venable.com)