



Venable LLP, an *AmLaw 100* firm, is headquartered in Washington, DC and has offices across the country.

Our nearly 600 attorneys practice in all areas of corporate and business law, complex litigation, intellectual property, and regulatory and government affairs. To learn more about Venable's capabilities, please see our complete list of [practice areas](#).

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 September 2011. To view the full text of an article, please click on the title of the piece.

### Advertising News & Analysis - September 1, 2011

#### News

- *World Trademark Review* ranks Venable Among the Top 20 Trademark Filers
- FTC to Raise DNC Registry Access Fees on October 1
- DOT Dings Jet Blue for Airfare Ad Disclosures
- Nestle Waters Hit With Late Fee Class Action

### Advertising News & Analysis - September 8, 2011

#### News

- FTC Zaps Acne Apps in First Mobile App Health Claims Case
- FTC: Cosmetic Claims Must Be More Than Skin Deep
- "All Natural" Claims Make It a Rough Week for Skinny Girl Cocktails

#### Analysis

- "Weiner Wars" Highlight Evolving Trends in Marketers' Use of Legal Challenges

### Advertising News & Analysis - September 22, 2011

#### News

- FTC Proposes COPPA Changes, Seeks Public Comment
- Michaels Settles Reference Pricing Case
- SAS Group Settles Over "Free Items" Case

### Advertising Law News and Analysis- September 30, 2011

#### News

- FTC, Reebok Reach \$25 Million Toning Claims Settlement
- Florida AG Secures \$800,000 "Free Offers" Settlement With Internet Marketer
- Plaintiffs' Attorneys File Second "All Natural" Class Action

### Diligence in Business Transactions: A Brief Primer

In a competitive economy, businesses make strategic decisions regarding acquisition targets in merger and acquisition transactions based upon projected outcomes related to post-transaction operations. In order to make informed decisions, the acquirers must have accurate and verifiable data about the assets or entities involved in the transaction. This data is generally obtained through the business due diligence process. When properly conducted, the due diligence process gives all parties the opportunity to evaluate whether the proposed transaction is likely to produce the expected results. Due diligence materials (e.g., material contracts, litigation, prospective customer leads) are often the best source of key information for any business transaction.

### The Dodd-Frank Wall Street Reform and Consumer Protection Act: A Review of the 2011 Proxy Season and a Look Forward to 2012

As the 2011 proxy season draws to a close, it is time to reflect on the lessons learned from this past year - the first year in which the Dodd-Frank Wall Street Reform and Consumer Protection Act affected the proxy season. Dodd-Frank mandated that almost all public companies include two additional proposals in their 2011 proxy materials. The first required companies to conduct a separate stockholder advisory vote

to approve the compensation of executives ("say-on-pay"). The second required companies to conduct a separate stockholder advisory vote to determine how frequently a company will conduct say-on-pay votes in the future ("say-on-frequency").

### **Fee Increase at U.S. Patent and Trademark Office**

Patent portfolio managers will see immediate financial effects from the newly passed America Invents Act, and face short-term difficulties managing their portfolios due to increased uncertainty over the next several months. Filing, prosecuting and maintaining patents will become more expensive as the U.S. Patent and Trademark Office levies a 15% surcharge on most fees. As the USPTO evaluates its financial needs over the next several months, cost fluctuations are likely. There is some good news for some small inventors, however, as overall costs may decrease.

### **Historic Patent Reform Bill to Become Law**

After six years of consideration on Capitol Hill, the U.S. Senate passed monumental patent reform legislation on September 8, 2011 by an impressive 89-9 margin. The House of Representatives has already given its approval. President Obama has heralded the legislation as a "job creator," and following his signature the bill will become law. Enactment is expected within a week, and parts of the law will go into effect immediately.

### **New Guidance for Nonprofits Regarding Social Media Policies and Punishment**

In our last alert on this subject (*Nonprofits Beware: Your Employees' Blogs, Facebook Posts, and Twitter Tweets May Be Protected by the National Labor Relations Act*), nonprofit employers were reminded that rapidly developing law in the area of disciplining employees for voicing workplace gripes in social media such as Facebook or Twitter warranted caution before punishment of such behavior, as well as a review of policies that might be found to unlawfully impinge on employee rights under the National Labor Relations Act. Two recent developments – the issuance of guidance by the Acting General Counsel of the National Labor Relations Board and the issuance of the first decision by an administrative law judge finding a violation of the NLRA for Facebook-related firings – provide important additional instruction.

### **New NLRB Guidance on Disciplining for Facebook Postings, Twitter Tweets and Blogs**

An important managerial prerogative is the ability to prescribe and enforce workplace rules designed to maintain decorum in the workplace. Recent developments at the National Labor Relations Board have highlighted emerging issues regarding the tension between this prerogative and concerted, protected activity under the National Labor Relations Act, which provides workers – regardless of whether they belong to a union – with a protected right to engage in concerted, or group, activity for purposes of collective bargaining or "other mutual aid or protection." The tension has been dramatized by the increasing use by employees of social media such as Facebook, Twitter, and blogs to voice workplace gripes, often in inappropriate and sometime vulgar ways. Some employers seeking to punish such behavior, however, have learned the hard way that such commentary may be protected even though the audience includes nonemployees, or that the policies they are seeking to enforce are overbroad and infringe on an employee's rights protected under the NLRA.

### **Next Up – The California Tax Amnesty Initiative**

The federal 2011 Offshore Voluntary Disclosure Initiative ended on Friday, September 9, 2011. Taxpayers who participated in either the 2009 Offshore Voluntary Disclosure Program or the 2011 OVDI were required to file amended federal income tax returns to report previously unreported income as far back as the 2003 tax year. As a result of filing those amended federal income tax returns, taxpayers will typically have to file amended state income tax returns for those same years as well. In the rush to comply with the September 9, 2011 deadline, taxpayers often left filing their amended state tax returns to a later date.

### **Picture is Bleak for Michaels' Crafty Ads**

On September 19, the New York Attorney General announced a settlement with retail chain Michaels Stores over its allegedly deceptive advertising practices. Attorney General Eric Schneiderman claimed that the arts and crafts giant deceived consumers into thinking they were receiving enormous discounts on certain products when, in fact, they were really paying regular store prices. In an Assurance of Discontinuance, Michaels agreed to pay \$1.8 million, including \$800,000 in civil penalties and \$1 million in arts and crafts supplies to be donated to New York public schools, and agreed to limit its advertising practices in the future and comply with all applicable state and federal laws.

## Stockholder's Agreements: Controlling the Transfer of Stock

In addition to all of the day-to-day, operational decisions that go into running a business, the principal stockholders of a privately-held company must make many choices about what rights and obligations the company's stockholders will have with respect to each other as owners of the company and with respect to the company itself. These choices include how company-level decisions will be made, who will be elected to the company's board of directors, how to resolve any impasses if the decision-makers disagree, who can become a stockholder of the company, and what happens if one of the stockholders "wants out". Perhaps the most important of these types of decisions relates to what sort of restrictions apply to the ownership and transfer of the company's stock.

## Up to 40% of HUBZone Concerns May Lose Program Eligibility Beginning In October 2011 As Many Qualified HUBZone Areas Are Set to Expire

On October 1, 2011, the Census Bureau is expected to release data from the 2010 Decennial Census that will immediately impact the HUBZone eligibility for many small business concerns. If you are a qualified HUBZone concern, or intend to partner with a HUBZone concern for upcoming proposal efforts, it is imperative that you closely monitor the Small Business Administration's website for updates to the HUBZone maps and determine whether your concern's program eligibility is at risk.

We would also like to highlight upcoming Venable events that you may be interested in attending. Please click on the event title for additional information.

## Nonprofit Strategic Partnerships: Building Successful Ones and Avoiding the Legal Traps

**October 6, 2011**  
**12:00 p.m. - 2:00 p.m. EDT**

With many facing economic uncertainty and challenges, nonprofits are increasingly focused on developing and maintaining valuable partnerships -- with for-profits, other nonprofits, governmental entities, and more. Solid strategic partnerships can lead to increased revenues, members or constituents, and message resonance, among other benefits.

Does your nonprofit have a blueprint for developing strategic partnerships, joint ventures, affiliations and collaborations, or commercial co-ventures? Has your organization reached a plateau with message distribution and grassroots impact? Have you structured your partnerships to maximize legal protection and minimize taxable income?

Obtain a road map to building long-lasting, successful strategic partnerships and get answers to your organization's critical partnership challenges. Also learn what contractual, corporate governance, copyright and trademark, and other legal hurdles you may encounter along the way and how to creatively and proactively structure partnerships to overcome these hurdles. Join us to hear what charitable solicitation registration and reporting requirements may apply, and how to minimize unrelated business income from your partnerships and other ventures.

Led by some of the nation's leaders in this area on both the consulting and legal side, this is an invaluable session you (and your advisers) will not want to miss.

## Preparing Your Middle-Market Company for a Sale

**October 12, 2011**  
**7:30 a.m. - 10:30 a.m. EDT**

Years are spent building a successful business. That success has been driven by long days and late nights working, but none of it has come easy. Is now the right time to think about selling? What can be done today to prepare for the right time? Is this the dawn of an era of opportunity for middle-market businesses? These are the questions that face every business owner and that will be addressed by leading middle-market M&A professionals. With insights from people who spend their professional lives advising business owners about how to prepare for and execute smoothly a sale of their most precious asset, this is an event not to miss.

Registration, Breakfast and Meet & Greet

Opening Remarks

### Module 1: Market Overview

Featuring a panel of investment bankers.

### Module 2: Pre-Sale Planning

Featuring a panel of estate planning and wealth advisors.

### Module 3: Incentivizing Employees Before the Sale Cycle

Featuring a panel of business owners who have recently gone through the sale process.

## Spurring Private Investment in America's Infrastructure: Is a National Infrastructure Bank the Answer?

**October 19, 2011**  
**8:30 a.m. - 10:00 a.m. EDT**

It's clear that America needs investment in its infrastructure. What's not so clear is how to best leverage limited public resources and private financing sources in order to obtain the maximum benefit from each. Join Venable and TFI-News for a timely and interactive discussion on a topic that has engendered much interest - and considerable debate - in the infrastructure finance community: the establishment of a National Infrastructure Bank and whether such an institution will have the desired effect of promoting desperately needed investments in the country's infrastructure.

## Opportunities and Challenges in Implementing an International Business Strategy

**October 21, 2011**  
**8:00 a.m. - 10:00 a.m. EDT**

As companies look to implement an international strategy there are numerous opportunities and challenges facing management. The question is often not should they go overseas, but how? Our experienced practitioners will discuss several of the key legal, accounting, organizational, and business development issues to consider when developing your plan.

### Topics:

- Developing an International Strategy: New Markets, New Partners, New Sources of Financing
- Considerations for Setting Up Shop in International markets: International Tax Implications and Strategies
- International Start-Up Basics - Hiring Employees, Payroll, Local compliance and Entity set-up options and Recommendations
- U.S. Regulatory Challenges of Conducting Business Abroad: Foreign Corrupt Practices Act, Export Controls
- Designing and Implementing an International Intellectual Property Strategy

## Getting Your Fair Share: How To Prevent Royalty Underpayments

**October 26, 2011**  
**1:00 p.m. - 2:00 p.m. EDT**

Every year billions of dollars are paid and received in royalty payments. It does not matter the field you are in, royalties are paid for software, patents, trademarks, copyrights, publicity rights, art, sports, pharmaceuticals, technology transfers, music, films...and the list goes on.

To learn the challenges of royalty underpayment, please join [Joshua J. Kaufman](#), Chair of Venable's Copyright and Licensing group, [Debora R. Stewart](#), CPA/CFF, Managing Director of InvoTex and auditor [Anthony Curtis Elliott](#), CPA as they discuss how you can prevent underpayments and recoup what is owed to you.

Feel free to invite friends and colleagues who may benefit from this invaluable discussion.

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