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News**Obama Uses Recess Appointment to Name Cordray CFPB Head**

On Wednesday, President Obama used an unprecedented recess appointment—while Congress remained in "pro forma" session—to name Richard Cordray head of the Consumer Financial Protection Bureau ("CFPB") after the Senate refused to give Cordray's nomination an up-or-down vote last month.

The CFPB, which was created by the passage of The Dodd-Frank Act in 2010, is responsible for regulating companies that extend credit to consumers and certain other financial services companies. The agency has been a popular target for Republican lawmakers since the passage of the Act.

Obama appointed Cordray, who served for two years as Ohio's Attorney General, to lead the Bureau in July, replacing Harvard professor Elizabeth Warren. During her tenure as interim chief of the CFPB, Warren's comments about the financial services industry made her a lightning rod for Republicans' opposition to the Bureau.

According to the *Washington Post's* "44" Blog, the appointment will likely infuriate Republican legislators who do not want Cordray to lead the agency and could delay the progress of a number of Obama appointments currently awaiting confirmation by the Senate.

[Go here](#) to read coverage of the appointment in the *Washington Post's* "44" Blog.

AT&T Settles Unwanted Cell Phone Charge Allegations with Florida AG

On December 30, the Florida Attorney General's office announced that it had reached a multi-million settlement with AT&T Mobility, resolving allegations that the company charged Florida customers' cell phone bills for a roadside assistance program without obtaining customers' consent.

Under the settlement, the company must refund all charges billed for the program to Florida customers who did not consent to the addition of the service to their bills or use the service during the time they were charged. The AG's office estimates that more than 600,000 Florida cell phone numbers were charged for the program and that a large number of those customers will be eligible for refunds.

According to the AG's press release, this is the first settlement that specifically requires a cell phone company to use text messages to confirm a service has been added to a customer's cell phone and provide an easy method for the consumer to cancel the service if it is unwanted.

The settlement also requires that AT&T Mobility provide any future customers multiple disclosures concerning charges added to their bills. Under the settlement, AT&T Mobility must send an initial text message five days after a customer is enrolled in Roadside Assistance confirming the details of the purchase and providing an easy way to cancel. The company must then send another text message to those customers five days prior to the expiration of any free period of service reminding the customer of the charges and providing further notice of how to cancel. AT&T Mobility must also clearly and conspicuously disclose the cost of add-on services when they are offered in certain types of billing plans and obtain the customer's authorization for those added charges.

[Go here](#) to read the Florida AG's press release.

[Go here](#) to read the settlement agreement.

FCC Seeks Disclosure of Corporate Interests in TV News Broadcasts

According to a January 3 *Washington Post* story, the Federal Communications Commission ("FCC") has proposed more stringent regulations requiring the 1,500 commercial TV stations in the United States to disclose any corporate interests involved in their newscasts.

The regulations are in response to the concerns that subtle "pay-for-play" marketing programs are becoming a prevalent component in television news programs. The proposed regulations specifically target news programs that have allowed sponsors to shape or even dictate the content of the coverage,

practice, please visit our website at www.Venable.com/Advertising-and-Marketing.

but, to the average viewer, appear to be independent journalism.

A common form of advertiser-supplied content, according to another recent *Washington Post* story ([go here](#) to read the story), are live interviews featuring seemingly neutral reviewers who have, in reality, been paid by sponsors to mention and/or recommend products. Other examples include companies paying television stations and third parties for interviews in "feature stories" as well as "exclusive" relationships in which local hospitals pay television stations for inclusion in the station's health-related stories.

According to the *Washington Post* story, there is little agreement in the broadcast industry about what constitutes "adequate" on-air disclosure of advertiser involvement in the news. The National Association of Broadcasters has formed a working group to study the proposed new regulations.

It is important to note that the proposed regulations would apply only to broadcasters and not to marketers. However, the disclosure requirements, if enacted, may affect marketers by causing stations to change their policies on the utilization of materials such as video news releases and product "round-up" segments, or their acceptance of editorial input from marketers.

In addition, under the FTC's "Guides Concerning the Use of Endorsements and Testimonials in Advertising," any individual, such as a presenter conducting "product round-up" interviews for a number of television stations, must disclose that they are receiving compensation from marketers in return for their endorsement.

[Go here](#) to read the *Washington Post* story.

[Go here](#) to read a recent column about the proposed rule written by the FCC's. Steven Waldman and published in the *Columbia Journalism Review*.

[Go here](#) to read the FCC's proposed regulation

Analysis

ERSP Sets High Standards for Body-Shaping Claims

In the January 2012 issue of *Electronic Retailer*, Venable's Gregory J. Sater discusses how two recent decisions by the Electronic Retailing Self-Regulatory Program ("ERSP") highlight the tougher stand the program is taking on the claims marketers make about body-shaping products and the substantiation of those claims.

[Go here](#) to read Sater's piece, which is on page 40 of the magazine.

Upcoming Events

[Affiliate Summit West – Las Vegas](#)

January 9, 2012

Visit Venable during the Meet Market at Affiliate Summit West, and join us for a presentation on Affiliates Under Fire: Next Steps and Best Practices.

[The 8th Annual Anti-Counterfeiting & Brand Protection Summit – San Francisco](#)

January 23 - 25, 2012

Join Partners, [Marcella Ballard](#) and [Justin Pierce](#) as they participate in panel discussions on policies and strategies to protect against counterfeiting, piracy, parallel importing and product diversion. Hosted by the International Quality and Productivity Center (IQPC).

[Justin Pierce](#) will speak on the panel entitled: "Quantifying the Potential Impact of Counterfeiting on Your Brand and Your Bottom Line" on January 24 at 9:00 a.m. (PST).

[Marcella Ballard](#) along with other industry professionals is speaking on a panel called "What Steps Can Brand Owners Take to Counter the Ease of Distribution, Communication and Anonymity the Internet Affords?" on January 25 at 11:15 a.m. (PST).

[ACI's Advertising Law Conference – New York](#)

January 23-24, 2012

Venable is a proud sponsor of this conference, join us for a presentation by [Roger A. Colaizzi](#) on Battle of the Brands: Resolving Disputes Involving Competitor's Comparative Claims.

[ACI's Consumer Finance Class Actions & Litigation – New York](#)

January 26-27, 2012

Venable is a proud sponsor of this conference, join us for a presentation by [Thomas E. Gilbertsen](#) on Dodd-Frank & the CFPB: A Look into Today's Most Important Issues, the Status of the Bureau and Which

Regulations Will Most Impact Consumer Finance Institutions & Litigators in the Next Year.

[Marcus Evans Legal Risks in Emerging Technologies – Alexandria](#)

January 26-27, 2012

Venable is a proud sponsor of this event, join us for a presentation by [Melissa Landau Steinman](#) on Effectively Using New Promotional Techniques on Social Media and Mobile Applications Without Violating the Law.

[Understanding the Legal Issues in Social Networking, LIVE Webcast for The Knowledge Congress](#)

February 8, 2012

Venable is a proud sponsor of this event, join us for a presentation by [Melissa Landau Steinman](#) on the legal issues companies face related to social networking, and learn strategies to address the legal implications, mitigate risks and make the most of social networking efforts.

[ERA Great Ideas Summit – Miami](#)

February 27-29, 2012

Venable is a proud sponsor of this event, visit us at our Exhibit Booth (no. 105).

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