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Honors and Awards

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Advertising, *U.S. News and World
Report*, 2011

News

FTC Commissioner Tells Industry Group Social Media Sharing Cannot be Forced

On April 17, Federal Trade Commission (FTC) Commissioner Julie Brill, in her remarks to an industry group, acknowledged that social media sites are fundamentally changing the ways consumers get information and interact with one another. However, she told the Broadband Breakfast Club, those users cannot be compelled by the social media platforms they use to share their personal information.

Brill pointed to the FTC's recent enforcement actions against several social media sites as evidence of its aggressive stance on privacy issues. She added that Congress should complement the FTC's recent action by enacting "baseline legislation" that creates an environment of "certainty and clear rules of the road" to allow the industry to "act decisively."

[Click here](#) to read coverage of Brill's comments in the *Hillicon Valley* blog, published by *The Hill*.

CFPB Says Financial Institutions Responsible for Contractors' Actions

On April 13, the Consumer Financial Protection Bureau (CFPB) released a bulletin notifying financial institutions that fall under CFPB's supervision that they may be held responsible for the actions of the companies with which they contract.

"Consumers must not be hurt by unfair, deceptive, or abusive practices of service providers. Banks and nonbanks must manage these relationships carefully and can be held accountable if they break the law," said CFPB Director Richard Cordray in a press release.

The CFPB's press release specifically mentioned companies who act as service providers to financial institutions. Such service providers could partner with the financial institutions to market ancillary goods and services or to act as consultants that provide expert advice. In addition, telemarketing or call center providers could be considered contractors whose actions might expose financial institutions to enforcement actions.

The CFPB recommends that financial institutions take steps to ensure contractors comply with the law. These steps include:

- Conducting thorough due diligence to verify that the service provider understands and is capable of complying with the law;
- Requesting and reviewing the service provider's policies, procedures, internal controls, and training materials to ensure that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;
- Including in the contract clear expectations about compliance, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities;
- Establishing internal controls and on-going monitoring to determine whether the service provider is complying with the law; and
- Taking prompt action to address fully any problems identified through the monitoring process.



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[Click here](#) to read the CFPB's press release. A copy of the CFPB bulletin is also available via this link.

[Click here](#) to read Venable attorney [Jonathan L. Pompan](#)'s analysis of the CFPB's bulletin on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

Analysis

Fourth Circuit Revives Rosetta Stone's Google AdWords Claims

In a closely watched battle, the Fourth Circuit breathed life back into Rosetta Stone Ltd.'s trademark infringement and dilution claims against Google stemming from its AdWords program, writes Venable partner [Jacqueline Levasseur Patt](#) in a recent client alert and in a post on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

Rosetta Stone filed a complaint against Google in 2009 alleging that Google's policies for its AdWords program created a likelihood of confusion, as well as actual confusion, leading Internet users into buying counterfeit Rosetta Stone products. The district court ruled in favor of Google on all counts in 2010. However, the Fourth Circuit recently vacated the district court's order with respect to Rosetta Stone's infringement and dilution claims, reasoning that there were still issues of material fact with respect to whether or not Google's use of the Rosetta Stone mark was likely to cause confusion among consumers.

In addition, Patt writes, another key issue in the district court's decision was its "secondary ruling on infringement that held that the functionality doctrine alone would protect Google's use of the Rosetta Stone marks as keywords." However, the appellate court held that the functionality doctrine is not applicable where Rosetta Stone's use of its mark is not functional, and any usefulness of the mark to Google in its software program is irrelevant.

The reversal of the functionality doctrine in this case breathes new life into the hunt for brand protection in keyword advertising, but the battle is far from over. The case has been remanded to the trial court for further proceedings where the parties will continue to wage war over keyword advertising.

[Click here](#) to read Patt's post on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

[Click here](#) to read a client alert authored by Patt that provides a more in-depth analysis of the decision.

Events

[Toxics Regulation for Retailers and Consumer Products Manufacturers - Los Angeles](#)

April 24, 2012

Please join Venable partner [Randal M. Shaheen](#) when he presents "[Setting up an Effective Sustainability Marketing Program and Avoiding Greenwashing Claims.](#)" Shaheen will provide an update on recent regulations, case law, regulatory initiatives, compliance and marketing issues to assist attorneys, corporate management, risk managers, insurance professionals and governmental representatives. The presentation starts at 1:15 (PDT) and will take place at the Radisson Hotel at Los Angeles Airport.

[FDLI 55th Annual Conference - Washington, D.C.](#)

April 24-25, 2012

Venable partner [Ralph S. Tyler](#) will participate in the Former FDA Chief Counsels Roundtable, and [Todd A. Harrison](#) will join a panel titled "Functional Foods: How Foods, Dietary Supplements and Pharmaceuticals Are Becoming Increasingly Intertwined."

[ACC Quick Hit: "New Developments in Mobile Privacy"](#)

May 3, 2012, 12:00 p.m. EDT

As mobile device usage explodes, mobile privacy has become a focus of media and regulatory attention. The California Attorney General, Federal Trade Commission and industry groups have all recently weighed in on mobile privacy. What's behind the headlines? Please join Venable attorney [Julia Tama](#) who will review new developments, including the Digital Advertising Alliance's mobile initiative, to help you get your bearings in this evolving legal landscape.

ACC members may sign up for this teleconference at [ACC's website](#). If you are not an ACC member and wish to participate, please contact Paul Goatley, Legal Resources Coordinator, at goatley@acc.com and mention Venable to receive an invitation to participate.

New York City Bar Center for CLE

May 4, 2012, 9:00 a.m. to 12:30 p.m. EDT

Please join Venable partner [Melissa Landau Steinman](#) when she presents "[Sweepstakes, Promotions and Marketing Laws: Comprehension & Compliance](#)" on Friday, May 4, 2012. Topics of discussion will include the laws governing sweepstakes and skill contests, social media, mobile marketing, drafting official rules and disclosures, use of intellectual property, and the gift-card/coupon interface.

ERA'S Government Affairs Fly-In 2012 - Washington, DC

May 7-8, 2012

Please join Venable at the Electronic Retailing Association's 2012 Government Affairs Fly-In. The event, which takes place in Washington, DC from May 7-8, is an outstanding opportunity to learn more about the regulatory and legislative efforts affecting the electronic retailing industry and to meet with lawmakers and senior agency officials. Venable's [Jeffrey D. Knowles](#) will be among the dozen senior-level speakers from Capitol Hill, federal regulators, industry self-regulatory bodies, policy think tanks and the electronic retailing industry during this important two-day event.

Response Expo 2012 - San Diego, CA

May 15-17, 2012

Please join Venable at the Response Expo 2012. The event, which takes place in San Diego, CA from May 15-17, brings together key decisionmakers and industry leaders from the corporate marketing arena and direct response spectrum. Please stop by our booth and meet Venable's [Advertising and Marketing](#) attorneys. Venable is the proud sponsor of the Martini Party networking event, which will occur on May 16 from 4:30 p.m. - 6:00 p.m.

ACC's Social Media Day - Darien, CT

May 18, 2012

Social media has created a new frontier for many companies. The legal issues relating to social media evolve every day. This day-long program at the Woodway Country Club in Darien, CT will prepare legal professionals to confront this new reality and manage the resulting legal issues. Please join Venable partner [Leonard L. Gordon](#) when he presents "Managing Compliance Risks: Privacy, Consumer Protection and Social Media" on May 18, 2012 from 10:30 a.m. - 11:45 a.m. EDT. For registration information, please [click here](#).

ACI Litigating & Resolving Advertising Disputes - New York

June 19-20, 2012

Venable is a proud sponsor of the ACI Litigation & Resolving Advertising Disputes Conference. Please join Venable's [Thomas E. Gilbertsen](#) and [Amy Ralph Mudge](#). Gilbertsen will speak on the explosion of class action lawsuits and Mudge will moderate a panel of judges providing the judicial perspective on advertising litigation.

[Click 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.

Visit Venable's advertising law blog at www.allaboutadvertisinglaw.com.

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