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**Issue Editors****Jeffrey D. Knowles**jdknowles@Venable.com  
202.344.4860**Roger A. Colaizzi**racolaizzi@Venable.com  
202.344.8051**Gary D. Hailey**gdhailey@Venable.com  
202.344.4997**Make Your Voice Heard!**

Learn directly from Venable attorneys and have them answer your questions on two of the hottest topics facing marketers today. Venable partners **Jeffrey D. Knowles** and **Gregory J. Sater** both have session concepts in contention for inclusion in the agenda of the Electronic Retailing Association's **2012 D2C Conference**. Because the agenda for D2C, the largest direct response industry conference in the nation, is determined via crowdsourcing, your vote is critical.

[Click here](#) to learn more about the proposed sessions and [vote](#) for both Sater's "Riding the Social Media Rollercoaster" panel (#12 on the ballot) and Knowles' "Driving Change in Electronic Retailing: Enforcement, Self-Regulation and Legislation" panel (#15 on the ballot).

**In This Issue****Jeffrey D. Knowles**jdknowles@Venable.com  
202.344.4860**David G. Adams**dgadams@Venable.com  
202.344.8014**Ben D. Whitwell**bwhitwell@Venable.com  
310.229.9934**Jonathan L. Pompan**jlpompan@Venable.com  
202.344.4383**News****FDA Rejects "Corn Sugar" Rebranding for High-Fructose Corn Syrup**

On May 30, the Food and Drug Administration (FDA) rejected a petition by the Corn Refiners Association to rebrand high-fructose corn syrup (HFCS) as "corn sugar."

According to an *Ad Age* story, the ruling, which was issued after 20 months of review, states that the use of the term "corn sugar" to represent HFCS would not "accurately identify or describe the basic nature of the food or its characterizing properties." The FDA also said that renaming HFCS as "corn sugar" could pose a "public health concern."

[Click here](#) to read the *Ad Age* story.

[Click here](#) to read the FDA's letter rejecting the petition.

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**RealNetworks' "Free Trial" Charges Result in \$2.4 Million Washington AG Settlement**

On May 24, Seattle-based RealNetworks, an internet media company that provides streaming content, agreed to a \$2.4 million settlement with the Washington State Attorney General (AG) to resolve more than 500 consumers' complaints of "odd charges" appearing on their credit cards, as well as bills for monthly subscriptions for premium television, sports or game content that were never ordered.

According to the state's press release, many of the charges were the result of "deceptive" pre-checked boxes and fine print that obligated consumers to accept free-to-pay trials of subscription services when they downloaded the company's RealPlayer media player. The state also alleges that the company used similar tactics to drive cross-sells when consumers subscribed to one of the company's premium services.

The AG's office also alleged that some consumers had difficulty getting RealNetworks to stop the unwanted charges and were pitched more "free trials" during their cancellation calls.

The settlement requires RealNetworks to provide restitution to consumers and comply with the federal Restore Online Shoppers Confidence Act, which requires a customer's express consent before he or she



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can be charged for a free trial that converts into a paid subscription.

Other terms of the settlement require RealNetworks to:

- Stop using pre-checked boxes to obtain consent from consumers to purchase products or services;
- Stop offering free-to-pay conversions that do not clearly disclose all of the terms of the offer, including subscriptions that are automatically charged on customers' credit cards;
- Provide an online method of cancellation so that consumers may easily cancel their subscriptions;
- Send e-mail or other reminders that consumers are enrolled in a free-to-pay conversion, along with instructions for how to cancel the subscription;
- Cancel subscriptions within two days of a consumer's request to do so; and
- Inform consumers who have called to cancel a subscription of additional subscriptions on their account.

[Click here](#) to read the AG's press release and access the complaint and consent documents in the case.

## Analysis

# CFPB Launches Nonbank Supervision Rulemaking

On May 24, the Consumer Financial Protection Bureau (CFPB) proposed a rule that will set up a process to supervise nonbanks that may have engaged in activities that pose risks to consumers, writes Venable attorney [Jonathan L. Pompan](#) in a recent article. The proposed rule sets out procedures to notify a nonbank that it is being considered for supervision because the CFPB may have reasonable cause to determine that it poses risks to consumers in connection with offering or providing a consumer financial product or services.

The CFPB has statutory authority to supervise nonbanks that pose a risk to consumers. In addition, it has authority to oversee certain types of nonbanks, regardless of size, such as mortgage companies, payday lenders and private education lenders. The CFPB also has authority to supervise "larger participants" in other markets, such as consumer reporting companies and debt collectors.

The proposed rule includes provisions for:

- The CFPB to provide a consumer financial product or service with notice that the CFPB may have a reasonable cause to determine that non-bank is engaging, or has engaged, in conduct that poses risks to consumers;
- The nonbank to have 20 days to respond to the CFPB, and the nonbank may provide a supplemental oral response to provide arguments to the CFPB's Assistant Director or designee;
- The nonbank to execute a consent agreement to supervision in lieu of a response, if it does not contest the notice. In addition, a respondent may voluntarily consent to the CFPB's supervisory authority at any time during a proceeding; and
- The nonbank to file a petition to terminate supervision authority after two years.

Lastly, Pompan writes, it is important for nonbank entities to remember they are also subject to the CFPB's regulatory and enforcement authority and any applicable federal consumer financial law, regardless of whether they are subject to the CFPB's supervisory authority.

[Click here](#) to read Pompan's article.

# CA Class Action Representatives Hit with \$1.4 Million in Defendant's Attorneys' Fees

In early May, a California car dealership was awarded more than \$1.4 million in attorneys' fees and costs to be paid by 14 named class representative plaintiffs in an automobile retail sales contract backdating

class action case, writes Venable partner [Ben D. Whitwell](#) in a recent post on Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

The dealership obtained this award because the applicable statute, the California Automobile Sales Finance Act, has a mutual fee-shifting provision, and the dealership defeated all claims against it.

Whitwell writes that the award heightens the debate on whether class action plaintiffs' attorneys should be required to inform potential class representative plaintiffs that they could be held liable for defendants' attorneys' fees if the defendants prevail. The California legislature recently considered and then killed a bill that would have required attorneys advertising for class action plaintiffs to inform potential representative plaintiffs that they can be held liable for the defendant's attorneys' fees if the defendant is the prevailing party.

[Click here](#) to read Whitwell's full post on Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

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## Upcoming Events

### [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.

For registration information, please [click here](#).

### [ACI Hatch-Waxman Boot Camp - San Diego](#)

June 25-26, 2012

Attend this essential event to understand the interplay of intellectual property and FDA regulation relative to pharma/biotech patents in light of Hatch-Waxman and recently released biosimilars guidance. Additionally, ensure that you are aware of the intersection of the America Invents Act with Hatch-Waxman. Please join Venable partner [David G. Adams](#) when he presents "An In-Depth Look at 180-Day Exclusivity" on June 26, 2012 from 11:15 a.m. - 12:15 p.m. PDT.

For registration information, please [click here](#).

### [Engredea Asia Market Quickstart - Shanghai and Xi'an, China](#)

June 29-30 and July 3-4, 2012

Developed by Engredea, the Market Quickstart is a teaching program that helps companies in the healthy and natural products industry prepare for international business, especially in the United States. Venable partner [Claudia A. Lewis-Eng](#) will address the attendees in Shanghai and Xi'an.

### [15th Annual NBJ Summit - Dana Point, CA](#)

July 24-27, 2012

Venable is a proud sponsor of the 2012 NBJ Summit, hosted by Nutrition Business Journal and New Hope Natural Media. Please join Venable partner [Jeffrey D. Knowles](#) and Venable partner and former FDA Chief Counsel [Ralph S. Tyler](#) on Friday, July 27 at 9:15 - 10:35 a.m. PDT and at 11:00 - 11:40 a.m. PDT. Their session and panel discussion will provide insiders' views of regulatory activity by the FDA and FTC as well as predictions for the future.

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