



June 21, 2012

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Honors and Awards

Top ranked in *Chambers USA*
2012

News

Venable Secures Top *Chambers USA*, *Legal 500* Honors

Over the past couple of weeks, Venable's **Advertising, Marketing and New Media** practice has received top honors from two of the nation's leading legal rankings, *Chambers USA* and *Legal 500*.

Chambers USA named Venable to Band 1, the top tier, in Advertising: Litigation and to Band 2 of the Advertising: Regulatory and Transactional category. Venable attorneys **Roger A. Colaizzi**, **Todd A. Harrison** and **Jeffrey D. Knowles** were ranked as individuals in *Chambers'* National Advertising categories.

Legal 500 named Venable a First-Tier firm in the Marketing and Advertising category. The publication also named Colaizzi and Knowles among the nation's top 16 "Leading Lawyers" in the Marketing and Advertising category. These honors are in addition to Venable's advertising practice being named the 2011-2012 Advertising "Law Firm of the Year" by *US News and World Report / Best Lawyers* in November 2011.

CFPB Launches Consumer Complaint Database, Shuffles Senior Management

This week, the Consumer Financial Protection Bureau (CFPB) launched a public Consumer Complaint Database making available the Bureau's data on credit card complaints received through June 1, 2012. The CFPB also released a snapshot of the complaints it has received about credit cards, mortgages, private student loans, and bank products through June 1.

The database gives the public access to the CFPB's data on the types and causes of complaints. It also makes available data about certain types of complaints, including type of complaint, date of submission, consumer's zip code, and the company that the complaint concerns. The database also includes information about the actions taken on each complaint such as timeliness of the company's response, how the company responded, and whether the consumer disputed the company's response.

Interestingly, the press release notes that two key factors in the CFPB's prioritization of complaints for review and investigation are whether the consumer disputes the company's response or the company fails to provide a timely response.

[Click here](#) to read the CFPB's press release and access the Consumer Complaint Database.

In a separate announcement this week, the CFPB announced several changes to the Bureau's senior management. Staffing changes included appointments to the following positions: Associate Director for Supervision, Enforcement, and Fair Lending; General Counsel; Senior Advisor and Counselor to the Director; Assistant Director for the Office of Financial Empowerment; Assistant Director for the Office of Financial Education; and Ombudsman.

[Click here](#) to read the CFPB's press release about the appointments.

Analysis



Law Firm of the Year, National Advertising, *U.S. News and World Report*, 2011



Top-Tier Firm *Legal 500*



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

Federal Judge Gives Supplement Company Daniel Chapter One A Do-Over

In 2010, the Federal Trade Commission (FTC) entered an order against Daniel Chapter One which prohibited the company from making various cancer and tumor related claims for its dietary supplements, write Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) in a recent post on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

In March 2011, the FTC (through the Department of Justice) asked a federal district court to find the company in contempt of the order. In June 2011, the court agreed and entered an injunction requiring the company to obey the FTC's order. Last month the same court found that the company had still not come into compliance with the order.

The court held that it has broad discretion to fashion contempt remedies and that monetary sanctions can be imposed to coerce compliance and compensate for losses. Although it noted that monetary sanctions to coerce compliance were appropriate in this case, the court also held that a "coercive, civil contempt penalty is one that is 'avoidable through obedience.'" Thus, the court gave Daniel Chapter One two weeks to purge its contempt and avoid escalating monetary fines and, ultimately, imprisonment. The company then filed the requisite notice with the court that it had purged its contempt.

Mudge and Shaheen write that they have not seen many opportunities in federal court for clients to "purge" their contempt and believe it is unwise for companies to count on that opportunity.

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

[Click here](#) to read the judge's order in the case.

Consumers Suffer Recall Fatigue

Consumers were bombarded with more than 6.5 recalls per day last year, according to a recent *USA Today* article quoting statistics from the U.S. Department of Agriculture, the Food and Drug Administration and the Consumer Product Safety Commission, writes Venable partner [Todd A. Harrison](#) in a recent guest post to [Stericycle Expert Recall's "Expert Insights" blog](#).

That, writes Harrison, is more than 2,300 recalls a year, ranging from consumer products and pharmaceuticals to medical devices and food. Additionally, 12 percent of people ate recalled food and 40 percent never checked to see if a product had been recalled in the past.

Those are staggering numbers, and it is clear that "recall fatigue" is setting in. When people who frequently see recalls begin to ignore recall announcements and fail to dispose of potentially harmful products, writes Harrison, the liability facing companies managing recalls can increase exponentially.

[Click here](#) to read Harrison's full post.

Continuing a Claim After NAD Recommends Discontinuing = Fast Track to FTC

An adverse decision from the National Advertising Division of the Council of Better Business Bureaus (NAD) recommending that an advertising claim be modified or even permanently discontinued is the beginning, not the end, for marketers and their lawyers, write Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) in a recent post on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

Last month, the NAD referred a razor company to the FTC after a second compliance challenge. Schick's ads for its Hydro razors featured "water burst imagery," for example, a frisbee exploding into water when a man catches it. The NAD found that while it was substantiated that the razor and its water-activated gel hydrates skin during shaving, the images conveyed an unsupported claim that the razor provided ongoing post-shaving hydration.

Because there was no consumer perception evidence in the record, the NAD "stepped into the shoes of a reasonable consumer" and determined a promise of continued hydration after shaving was one possible takeaway message. Schick, write Mudge and Shaheen, did a few things after the decision. It changed the claim from "hydrates your skin as you shave" to "hydrates your skin throughout each shave." The company also conducted consumer perception evidence showing consumers took away no claim from these images.

NAD did not accept the evidence and said it had made its conclusions. Further, it expressed disappointment in the lack of compliance and referred the matter to the FTC. In their blog post, Shaheen and Mudge call the case "a very interesting situation and one that could prompt a lot of debate." On the one hand, if the survey was well conducted and robust and showed NAD got it wrong, they ask, shouldn't that be sufficient to allow similar claims? On the other hand, accepting new evidence after rendering a decision could invite real gamesmanship in the self-regulatory process — inciting companies not to test consumer understanding of claims during an NAD challenge but to do so only after the fact if there is an adverse decision.

So what is an advertiser to do? Mudge and Shaheen say an appeal is always an option for advertisers that believe the NAD reached the wrong conclusions. However, running the same claims with new support is a risky proposition, as the Schick referral indicates. If marketers decide to modify the claim to take into account the NAD's concerns, it is a best practice to amend or clarify the claim itself, and not simply rely on a disclaimer.

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

Upcoming Events

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](#).

ACI Food Safety Regulatory Compliance Summit - Chicago

June 26-27, 2012

This forum provides in-house food safety, regulatory and compliance officers and legal counsel with an opportunity to benchmark internal protocols in response to new regulatory requirements under the Food Safety Modernization Act. Please join Venable partner and former FDA Chief Counsel [Ralph S. Tyler](#) when he presents "Food Safety in Transition" on June 26, 2012 from 9:30 a.m. - 10:30 a.m. CDT.

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.

LeadsCon East 2012 - New York

July 24-25, 2012

LeadsCon is the pioneering conference and summit for the online lead generation and broader customer acquisition industry. Please join Venable attorney [Jonathan L. Pompan](#) when he moderates a discussion entitled "Co-reg, Destination Sites, and Up-sells, 'Oh My!'" on Wednesday, July 25 from 11:30 a.m. - 12:00 p.m. EDT. A panel of leading advertisers will discuss the challenges of online and telephonic lead generation.

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

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 - 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.

3rd Annual DRMA Summer Bash - Irvine, CA

July 26, 2012

Venable is a proud sponsor of the Direct Response Marketing Alliance's Summer Bash. Please join the attorneys of Venable's **Advertising and Marketing Group** for an evening of wine tasting and networking, held at the Shady Canyon Country Club in Irvine, CA.

2012 Electronic Retailing Association D2C Convention - Las Vegas

September 11-13, 2012

Venable is a proud sponsor of the ERA D2C Convention. The ERA is the only trade association in the U.S. and internationally that represents leaders of the direct-to-consumer marketplace, which includes members that maximize revenues through direct-to-consumer marketing on television, online, mobile and on radio. Please visit the attorneys of our **Advertising and Marketing Group** at booth #915.

[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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