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Honors and Awards

Top ranked in *Chambers USA*
 2012



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

Miami Needs Your Vote!

Voting for the education sessions at the 2013 ERA Great Ideas Summit opened this week and closes on October 26, 2012. Two sessions featuring Venable attorneys are up for consideration, and we would appreciate your support. The sessions are:

#5 "Up, Down & Sideways: How Enforcement Actions Traverse the Value Chain," featuring Venable partner **Jeffrey D. Knowles**. This session focuses on how and why enforcement actions move from a marketer to its suppliers and from a single supplier to a community of client marketers and/or business associates. Learn why, in today's enforcement climate, you are truly your brother's keeper.

#12 "Email 101 – Build a Best in Class Email Revenue Machine," featuring Venable partner **Gregory J. Sater**. This session highlights strategies to build a best in class email strategy that is sustainable, scalable and compliant.

[Click here](#) to cast your vote for both of these informative sessions, and we look forward to seeing you in Miami.

News**FTC Announces Cross-Border Consumer Protection Forum**

The Federal Trade Commission (FTC) announced this week that it will host a forum on using enforceable industry codes of conduct to protect consumers involved in cross-border commerce. The November 29, 2012 forum will explore the establishment of voluntary codes of conduct that ensure companies in participating countries adhere to consistent privacy protection, food and product safety, and corporate social responsibility standards.

According to the FTC, the models for the discussion are systems like one created earlier this year to provide consistent privacy protections to consumers in the Asia-Pacific region. The FTC believes that these voluntary collaborations between industry, government and other groups are increasingly important as global commerce expands the number of areas that fall outside of traditional government oversight.

The forum will precede a conference sponsored by the American Society of International Law on the role of the private sector in shaping oversight of the global marketplace, which will be held at George Washington University Law School.

[Click here](#) to read the FTC's press release.

MyLife.com Settles Washington State AG Disclosures Investigation

The office of Washington Attorney General Rob McKenna announced last week that the Internet's leading site for people searches, MyLife.com, has settled an investigation related to deceptive advertisements and a lack of disclosures by the site.

According to the state's press release, MyLife's advertisements would entice consumers with claims that they could "just type in your name and see if someone is searching for you – for free." However,



Top-Tier Firm *Legal 500*



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consumers who did perform the searches found they had to initiate a subscription, typically costing \$12 - \$20 per month, in order to see who had recently "searched for them." In addition, the site failed to disclose to consumers that they would immediately be billed the total amount of the annual subscription, instead of paying in monthly installments and that the subscription would automatically renew without the consumer's express consent.

Under the agreement reached with the AG's office, MyLife.com will now:

- Clearly and conspicuously disclose the amount that consumers will be charged or billed before collecting a method of payment;
- Disclose that subscription services will automatically renew;
- Obtain consumers' consent for a payment that renews automatically before accepting the first payment;
- Cease advertising claims that the service is free and instead disclose that a purchase is required to access the promised information;
- Include a disclosure on its website detailing how the service works.

In addition, the company will pay \$28,000 in attorneys' costs and fees.

[Click here](#) to read the Attorney General's press release.

Analysis

No Consent Decree Is Too Old to Be Enforced

The FTC's recent announcement of a \$3.7 million settlement with Jason Pharmaceuticals demonstrates that the FTC is keeping an eye on its old consent decrees, writes Venable partner [Gregory J. Sater](#) in the October edition of the *DRMA Voice*. Because of this, marketers under order must remain vigilant and ensure continued compliance or risk opening their wallets again.

In the Jason Pharmaceuticals case, the FTC alleged that the marketer lacked "competent and reliable scientific evidence" to substantiate the claim that users of the program generally could expect to lose 2 to 5 pounds per week, or generally could expect to lose more than 30 pounds overall.

What may be most significant about the FTC's action, Sater writes, is that it was a contempt action: the FTC based its case on a consent decree that was 20 years old.

The 1992 consent decree the FTC used as the basis for the contempt action required Jason Pharmaceuticals to have "competent and reliable scientific evidence" to substantiate claims in connection with any weight-loss or weight-control program. In today's world, and to today's FTC, "competent and reliable scientific evidence" in a case regarding weight loss means a well-controlled human clinical study. Allegedly, the company did not have the study to support its claims.

Sater writes that the Jason Pharmaceuticals case should serve as a wake-up call to any company under a prior FTC consent decree. The case signals that today's FTC will not hesitate to reach back in time to bring an allegation of contempt, and that it will base its allegation upon its current 2012 view of what is, or is not, a deceptive advertising practice. Anyone with an FTC consent decree would be well advised to get it out, dust it off, and consider where the lines are drawn today.

[Click here](#) to read Sater's *DRMA Voice* column.

Advertising to Kids Is Not Child's Play

A recent review of decisions by the Children's Advertising Review Unit (CARU), an industry self-regulatory body focused on advertising to children, announced over the past month serves as a good reminder that when ads are directed to kids under 12, there is much more than substantiation at issue, write Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) in a post to Venable's advertising law blog, www.allaboutadvertisinglaw.com.

In the post, they write that advertisers targeting children have a higher burden when presenting disclosures, socially appropriate and safe situations, and healthy food choices. Mudge and Shaheen

highlight recent CARU decisions, involving Lego, Big Time Toys and Kraft Lunchables, that illustrate CARU's thinking in each of these areas.

In addition, the post points to a recent CARU decision involving an online game presented by pancake house chain IHOP to illustrate the responsibility advertisers have to clearly label as advertisements online games that contain commercial messages.

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

Upcoming Events

Online Marketing Summit - Santa Clara, CA

October 22-25, 2012

The Online Marketing Summit connects marketers with the knowledge, experts and technologies that are transforming digital marketing and business. Please join Venable attorney [Michael A. Signorelli](#) as he presents "Privacy Forward: Engaging Consumers in a Privacy-Sensitive Manner," on the subject of online behavioral advertising, on Tuesday, October 23 from 2:00 p.m. to 2:30 p.m. PDT.

To register for the Summit and receive a 25% discount as a guest of Venable, please [click here](#). The discount will be automatically applied.

ad:tech New York - New York City

November 7-8, 2012

ad:tech spans the full ecosystem of advertising, digital marketing and technology that moves business forward. Please join Venable attorneys at our booth on the show floor, #1735.

To schedule a meeting with one of our attorneys, please [click here](#).

To register, please [click here](#).

34th Annual Promotion Marketing Association Marketing Law Conference - Chicago

November 12-14, 2012

Venable is proud to sponsor the PMA Marketing Law Conference, featuring the nation's leading speakers from the Marketing and Advertising Law Bar and from major brands and prominent regulators. Venable partner [Melissa Landau Steinman](#) serves as co-chair and will present a session on gift cards and coupons. Joining her as speakers at the conference are Venable partner [Roger A. Colaizzi](#), who will address class action and governmental investigation defense, and Venable partner [Leonard L. Gordon](#), whose topic is telemarketing law enforcement.

Please join Venable at PMA. To register, please [click here](#).

[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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