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**News**

## FTC Adds New Commissioner

On January 11, Joshua D. Wright was sworn in as the newest Federal Trade Commission (FTC) Commissioner. Wright, a Republican whose term ends in 2019, will replace Commissioner J. Thomas Rosch. Prior to serving as Commissioner, Wright was a professor at George Mason University School of Law. He had also served as Scholar in Residence at the FTC's Bureau of Competition.

According to the FTC press release announcing his swearing-in, Wright's areas of expertise include antitrust law and economics, consumer protection, empirical law and economics, intellectual property, and the law and economics of contracts.

Wright received his J.D. and his Ph.D. in economics from UCLA, where he was managing editor of the *UCLA Law Review*. He also holds a B.A. in economics with highest departmental honors from the University of California, San Diego.

[Click here](#) to read the FTC press release announcing Wright's swearing-in.

**Analysis**

## Balance, Clarity Key to Success of Class Action Waivers

Last week a California appeals court upheld an earlier state trial court ruling in *Natalini v. Import Motors, Inc.*, invalidating a car dealer's mandatory arbitration and class waiver clause, holding the sales contract's arbitration clause unconscionable and therefore unenforceable to defeat a putative class action.

In a recent post to Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com), Venable attorneys **Thomas E. Gilbertsen** and **Ari N. Rothman** write that *Natalini* illustrates the limits of the United States Supreme Court's endorsement of arbitration provisions in consumer contracts in *AT&T Mobility LLC v. Concepcion*. They write that *Concepcion* is widely misunderstood as a talisman against consumer class actions.

Although *Concepcion* held that state courts may not adopt hard-and-fast rules invalidating agreements to arbitrate that include class waivers, it did not erect a hard-and-fast rule of its own that insulates consumer contract arbitration provisions from attack. Unconscionability, write Gilbertsen and Rothman, remains a defense to enforcement, but the *Natalini* case demonstrates the high hurdles that must be cleared to upend an arbitration provision.

[Click here](#) to read the full blog post and learn how arbitration provisions that are conspicuous, carefully constructed and balanced should provide marketers with the cover needed to avoid a *Natalini*-esque decision.

## FDA's Proposed Food Safety Rules Focus on Prevention

On January 4, the Food and Drug Administration (FDA) published two long-awaited proposed food safety rules aimed at preventing foodborne illness, write Venable attorneys **Todd A. Harrison**, **Ralph S. Tyler**, **John G. Moore**, **Matthew R. Rabinowitz** and **Erin E. Seder** in a recent client alert. The proposed rules implement the 2011 Food Safety Modernization Act and are available for public comment over the next four months. The rules have wide-ranging effects on every link in the global food supply chain.

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#### Honors and Awards

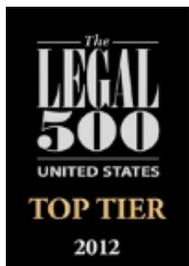
Top ranked in *Chambers USA*  
2012



Law Firm of the Year, National  
Advertising, *U.S. News and World*  
*Report*, 2011-2012



Top-Tier Firm *Legal 500*



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The first rule would require domestic and foreign food facilities to develop a formal plan for preventing their products from causing foodborne illness. The flexible rule would require controls only where necessary to prevent hazards to public health, and would exempt some facilities while subjecting some low-risk facilities to modified requirements.

The second proposed rule would implement safety standards for the production, harvesting, packing, and holding of produce on farms. This rule proposes science- and risk-based minimum standards, focusing on identified routes of microbial contamination of produce.

If the rules are finalized, most businesses would only have one year to comply with the first rule and two years to comply with the second rule.

Interested parties have until May 16, 2013 to provide the FDA with comments on the proposed rules.

[Click here](#) to read the full client alert, which provides more detail on the both of the proposed rules.

[Click here](#) to read the full text of the first proposed rule; [click here](#) to read the full text of the second proposed rule.

## WhoNu Dueling NAD, CARU Inquiries Would Yield Different Opinions?

The Children's Advertising Regulatory Unit (CARU) and National Advertising Division (NAD) are sister self-regulatory agencies under the Council of Better Business Bureaus' Advertising Self-Regulatory Council umbrella. Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) write in a recent post to Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com), that while NAD is focused on ensuring truth in advertising generally, CARU focuses on child-directed ads.

Both NAD and CARU reviewed ads for WhoNu cookies in 2012 and came to different conclusions, based on the maturity of the audiences. The decisions, Mudge and Shaheen write, are a good reminder that ads need to be reviewed through the lens of the intended or likely audience, and a less sophisticated group may be more inclined to take away an unintended but also unsupported implied claim.

[Click here](#) to read the full blog posts and learn more about the CARU and NAD inquiries and why they reached differing conclusions.

## Amazon "Appstore" Decision Takes a Bite Out of Apple

Last week, Amazon.com scored an opening-round victory in the battle between the two tech giants when a California federal judge dismissed Apple's false advertising claim against the online retailer, write Venable attorneys [Roger A. Coliazzi](#), [Maura A. Marcheski](#) and [Matthew R. Rabinowitz](#) in a recent post to Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

Apple sued Amazon in March 2011 after the launch of Amazon's Appstore, alleging multiple violations under the Lanham Act. In November, Apple tacked on a false advertising claim, which was recently dismissed. In the recent decision, the court found that Apple had not produced any evidence that consumers were fooled by Amazon's use of the term "Appstore" into believing the Amazon Appstore is affiliated with or sponsored by Apple.

[Click here](#) to read the full blog post to learn how Apple's failure to provide consumer sentiment data affected the outcome of the suit and how the stage is set for round two of the Amazon/Apple Appstore dispute.

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## Upcoming Events

### State of the Net Conference - Washington, DC

January 22-23, 2013

Venable is a proud sponsor of this conference, which is the largest information technology policy conference in the United States and the only one with more than 50 percent of Congressional staff and government policymakers in attendance. Join the attorneys of Venable's [Privacy and Data Security Group](#) at this important event.

practice, please visit our website at [www.Venable.com/Advertising-and-Marketing](http://www.Venable.com/Advertising-and-Marketing)

[Click here](#) to learn more.

#### **ABA Consumer Protection Conference - Washington, DC**

February 7, 2013

This biennial conference will focus on the future of consumer protection, privacy and advertising laws. Please join Venable partner **Amy Ralph Mudge** as she moderates "Copycat Private Class Actions: Making and Breaking the Links."

[Click here](#) to learn more.

#### **Electronic Retailing Association Great Ideas Summit - Miami**

February 25-27, 2013

Venable is proud to sponsor the VIP Reception of ERA's Great Ideas Summit 2013. Also, please join Venable partner **Jeffrey D. Knowles** as he presents the educational session "Up, Down and Sideways - How Enforcement Actions Traverse the Value Chain" on Tuesday, February 26. Meet the attorneys of **Venable's Advertising and Marketing Group** on the show floor at booth #304.

[Click here](#) to learn more about ERA GIS 2013 and register.

#### **International Home and Housewares Show - Chicago**

March 2-5, 2013

The International Home + Housewares Show offers you the opportunity to see first-hand consumer lifestyle and product trends for all areas of the home, both inside and out, under one roof. Venable partner **Randal M. Shaheen** will host a representative from a big-box retailer and a recycling-management executive to present "How to Make Green by Being Green and Staying Clear of the FTC." Join us and learn how to green your business – in more ways than one.

Venable is a sponsor of the **DRMA Chicago Networking Bash**, which occurs during the Housewares show. Please join our attorneys for an evening of networking with direct-to-consumer professionals.

[Click here](#) to register for Housewares.

#### **Engredea, Natural Products Expo West and Nutracon - Anaheim, CA**

March 6-10, 2013

Venable is a proud sponsor of this conference, which brings together the community of leading suppliers and manufacturers to source new ingredients, packaging, technologies, equipment, and services in the global nutrition industry. Venable partner **Todd A. Harrison** will speak at the Nutracon conference on March 6. Venable partner **Claudia A. Lewis** will speak on medical foods at Engredea on March 9. Come see us on the Engredea show floor at booth #355.

[Click here](#) to register.

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[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](http://www.allaboutadvertisinglaw.com).

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