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Honors and Awards

Top ranked in *Chambers USA*

News

FTC Robocall Challenge Draws Almost 750 Submissions

On January 31, the Federal Trade Commission (FTC) announced that it received 744 eligible entries before the January 17 submission deadline for its Robocall Challenge. The FTC announced the Robocall Challenge in October 2012 as part of its search to find the best technical solution to block illegal commercial robocalls on landlines and mobile phones.

The FTC offered a \$50,000 prize for the best overall solution for submissions by individuals, teams, and small organizations or a non-cash prize for a solution from an organization that employs 10 or more people. According to the FTC's press release, submissions will be scored based on efficacy of the solution, ease of use, and deployability. The FTC expects to announce the winner of the challenge, if there is one, in early April 2013.

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

Analysis

Advertising Substantiation Standards: A Brave New World

Over the last three years, the FTC has entered into consent decrees in which the agency has articulated the level of scientific substantiation that it wants to see under various circumstances, depending on the type of advertising claim made by a marketer. By many accounts, writes Venable partner **Gregory J. Sater** in the latest issue of International Research Services' newsletter, the FTC has set the bar extremely high in cases that have run the gamut from ingestibles and exercise equipment to footwear and cosmetics.

While FTC consent decrees only bind the companies who entered into the agreements, it is unwise for other marketers to disregard them because the FTC often uses consent decrees to send a message to the larger business community about where it draws the line. In the article, Sater discusses several of the most recent and relevant FTC consent decrees and what those decrees mean for marketers.

[Click here](#) to read the full text of Sater's piece.

Robocall, DNC Violations May Annoy FTC Even More Than the Average Consumer

In December, the FTC announced its 100th "Do Not Call" enforcement action since the creation of the National Do Not Call Registry in 2003. If the level of activity in 2012 is any indication, write Venable partners **Jeffrey D. Knowles** and **Jonathan L. Pompan** in the January issue of *Response Magazine*, marketers should expect the FTC's interest in Do Not Call matters generally — and robocalls specifically — to continue growing in 2013.

They write that 2012 is likely to be remembered as the year when the FTC declared war on commercial robocalls. Not only were there a large number of enforcement actions, but the FTC also put a public



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



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www.Venable.com/Advertising-and-Marketing

bounty on the practice's head during its "Robocall Summit" in October, when it announced the previously-mentioned Robocall Challenge.

In the *Response* article, Knowles and Pompan provide practical advice on compliance with robocall and Do Not Call regulations as well as a guide to the often-misunderstood "established business relationship" exception that allows marketers to call some numbers listed on the Do Not Call Registry.

[Click here](#) to read the full column in the January issue of *Response Magazine*.

Does Adding a Disclaimer Always Make a Claim "Safe?"

The basic rule of disclosures, write Venable attorneys [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) in a recent post to Venable's advertising law blog, www.allaboutadvertisinglaw.com, is that one cannot make a promise and then by use of a disclaimer explain that you did not really mean it. Appropriate disclosures, they write, clarify or provide additional information about the claim to put it into the proper context.

In the blog post, Mudge and Shaheen provide a primer on disclosures, examine recent FTC and National Advertising Division decisions addressing the use of disclaimers, and provide practical advice on incorporating disclosures into actual advertising claims.

[Click here](#) to read the full blog post and learn about the FTC's upcoming guidance on disclosures for online marketing.

Counsel's Bad Behavior Doesn't Kill Class Action

In *Reliable Money Order, Inc. v. McKnight Sales Co., Inc.*, which was decided earlier this month, the United States Court of Appeals for the Seventh Circuit declined to overturn class certification of a Telephone Consumer Protection Act (TCPA) junk fax suit, despite class counsel obtaining discovery from a third party in one case and using it to spawn a series of other TCPA cases even though the information was subject to a protective order, write Venable attorneys [Thomas E. Gilbertsen](#) and [Ari N. Rothman](#) in a recent post to Venable's advertising law blog, www.allaboutadvertisinglaw.com.

Gilbertsen and Rothman write that clients often ask what can be done about class action lawyers who troll for plaintiffs, new cases and other "self-help" discovery by misusing business records produced in discovery, sending solicitation letters to client customers, or posting defamatory information on their own websites or Internet chat rooms. Although a number of factors make it difficult to police the misuse of discovery materials by plaintiffs' attorneys, Gilbertsen and Rothman write that taking pains to do so deters abuses and almost always yields information of value.

[Click here](#) to read the full post on www.allaboutadvertisinglaw.com and learn what plaintiffs' counsel did in this case.

Upcoming Events

[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.

[ABA Antitrust Section, Private Advertising Litigation, Media and Technology, & Consumer Protection Committees - Webinar](#)

February 11, 2013

Join the ABA for this webinar entitled "Social Media Marketing Series #5: Sweepstakes, Contests & UGC Promotions". Venable partner [Melissa Landau Steinman](#) will join a distinguished panel to discuss how social-media marketing promotions may be regulated and to share strategies for creating legally compliant promotions that will meet the exacting standards of both the judicial courts and the court of public opinion. This webinar is free and open to all.

[Click here](#) to register.

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.

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

Venable is a sponsor of the **DRMA Chicago Networking Bash**, which occurs during the Housewares show, on March 4. Please join our attorneys for an evening of networking with direct-to-consumer professionals.

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.

[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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