



May 23, 2013

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**Honors and Awards**

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**Analysis**

## FTC Proposes Changes to TSR That Put Certain Payments in the Crosshairs

This week, the Federal Trade Commission (FTC) proposed changes to the Telemarketing Sales Rule (TSR). While the TSR is best known for its Do Not Call provisions, the Rule regulates a great deal more. The FTC's proposed amendments cut a broad swath across the TSR, and these proposed changes would mark the third time the TSR has been amended in the last 10 years, write Venable partners **Randal M. Shaheen** and **Amy Ralph Mudge** in a recent post to Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

Perhaps the most significant proposed change involves a ban on four increasingly common forms of payment the FTC believes make it easier to perpetuate fraud against consumers: "Remotely created" unsigned checks and payment orders, cash-to-cash money transfers, and cash reload mechanisms (which allow consumers to load cash onto either their own or someone else's prepaid debit card by supplying an authorization code).

The FTC is also proposing several changes to the TSR to reflect its current interpretation of the Rule. These are:

- Any recording of a consumer's express verifiable authorization must also include a description of the product they are purchasing;
- The telemarketer has the burden of proof with regard to whether there is an existing business relationship with the consumer or they have express written consent to contact a consumer on the Do Not Call Registry;
- The Business-to-Business exemption applies only to calls intended to bring about a sale or a contribution from a business and not calls targeted to persons employed by that business;
- The prohibition against companies sharing the cost of Do Not Call Registry fees is absolute; and,
- Prohibiting companies from harassing consumers who request to be placed on their do not call lists or imposing any conditions on such a request, such as listening to a sales pitch.

The FTC will accept public comments on the proposed amendments to the TSR deadline until July 29, 2013.

[Click here](#) to read a more detailed analysis of the proposed changes to the TSR on Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

[Click here](#) to read the FTC's notice of proposed rulemaking announcing the proposed changes to the TSR.

## Vermont Antes Up, Okays Consideration in Skill Contests

Although Vermont is known for its rugged individualism, a recent change to the state's laws governing promotions bring it in line with the majority of the nation's other jurisdictions and may portend changes in other "hold out" jurisdictions, write Venable attorneys **Melissa Landau Steinman** and **Maura A. Marcheski** in a recent post to Venable's advertising law blog.

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



Top-Tier Firm *Legal 500*



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In order to avoid being an illegal lottery, Landau Steinman and Marcheski write, promotions must usually lack one of three elements: a prize, the element of chance, or consideration (something of value given to enter). In most sweepstakes, promotion sponsors usually ensure legality by not charging an entry fee (or consideration). In games of skill, where the element of chance is, by definition, missing, most states allow promotion sponsors to charge contestants to enter.

Before Vermont passed the new law, the state was one of the few jurisdictions that prohibited sponsors from charging consideration to enter in skill games. The authors of the blog post write that Vermont's change may spur other states that currently ban consideration in skill contests to follow suit.

[Click here](#) to read the full blog post about the new law.

## NAD Not Shaving "Up To" Claims

The FTC's announcements last year concerning "up to" claims caused tremendous handwringing in the advertising community, write Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) in a recent post to Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

In those announcements, the FTC warned advertisers that they should test consumer understanding before using "up to" performance claims. This is because, in the FTC's view, consumers believe such claims promise the maximum stated performance and that all or almost all consumers will experience the maximum result.

However, staff members from the National Advertising Division of the Council of Better Business Bureaus (NAD) indicated last year that the self-regulatory body would maintain its "up to" standard that the claim "should not be an outlier and should represent a benefit that an appreciable number of consumers would enjoy."

Mudge and Shaheen write that the NAD made good on those statements in a recent decision when it wrote "that advertisers making 'up to' claims should be able to demonstrate that a substantial percentage of consumers are likely to achieve maximum results promised under normal circumstances."

According to Mudge and Shaheen, this decision, and the fact that the FTC has announced no other cases involving "up to" claims in the past year, is good news for advertisers who have been concerned about a sea change in how "up to" claims are reviewed.

[Click here](#) to read the full text of the post by Mudge and Shaheen on Venable's advertising law blog, [www.allaboutadvertisinglaw.com](http://www.allaboutadvertisinglaw.com).

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## Upcoming Events

### [Countdown to the New COPPA: What To Do When Compliance Seems Impossible](#)

May 30, 2013

Join Venable and the Direct Marketing Association (DMA) in this educational webinar to learn to avoid the pitfalls of Children's Online Privacy Protection Act (COPPA) compliance in the Digital Age. The session will walk through the July 1, 2013 COPPA Rule changes, take a deep dive into the FTC's "Complying with COPPA" FAQs, and answer your questions about how to stay on the right side of the regulators. Venable attorneys [Stuart P. Ingis](#) and [Julia Kernochan Tama](#), as well as DMA's Jerry Cerasale, will provide guidance and insight. The webinar occurs on Thursday, May 30 from 2:00 p.m. to 3:00 p.m. ET.

[Click here](#) to register.

### [Internet Retailer Conference and Exhibition 2013 - Chicago](#)

June 4-7, 2013

The 9th annual Internet Retailer Conference and Exhibition, the world's largest e-commerce event, will analyze the social, mobile, global, personal, interactive, and managerial changes that e-commerce players are bringing to the new retail economy. Please join Venable attorneys at booth #464 to learn how the firm can help your business grow and avoid the pitfalls of conducting commerce via the Internet.

[Click here](#) by June 2 to take advantage of discounted registration as a guest of Venable.

### [Advertising and Marketing Law Fundamentals for Consumer Financial Products and Services](#)

June 11, 2013

Please join Venable partners [Randal M. Shaheen](#), [Allyson B. Baker](#), and [Jonathan L. Pompan](#) in a

robust discussion of the effect of the CFPB's supervisory, regulatory and enforcement power on advertisers and marketers and their service providers. They will provide guidance upon the CFPB's expectations and share experiences from the front lines. This webinar will take place on Tuesday, June 11 from 2:00 p.m. to 3:15 p.m. ET.

[Click here](#) to register.

#### **ERA's HomeShopping Conference 2013 - Rome**

June 23-25, 2013

Whether you use the power of direct response to sell goods and services on television, online, or in the mobile/wireless world, the ERA European HomeShopping Conference is the place where you will find a truly global representation of people from within the industry. Venable partner [Claudia A. Lewis](#) will present a transactional and regulatory update that will provide inside views and information for product marketers who want to do business in the United States.

[Click here](#) to learn more.

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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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