



July 18, 2013

Issue Editors

Jeffrey D. Knowles
jdknowles@Venable.com
202.344.4860

Roger A. Colaizzi
racolaizzi@Venable.com
202.344.8051

Gary D. Hailey
gdhailey@Venable.com
202.344.4997

Gregory J. Sater
gjsater@Venable.com
310.229.0377

In This Issue

Jeffrey D. Knowles
jdknowles@Venable.com
202.344.4860

Allyson B. Baker
abbaker@Venable.com
202.344.4708

Ellen Traupman Berge
etberge@Venable.com
202.344.4704

Roger A. Colaizzi
racolaizzi@Venable.com
202.344.8051

Amy Ralph Mudge
amudge@Venable.com
202.344.4743

Randal M. Shaheen
rmshaheen@Venable.com
202.344.4488

Annie H. Lee
ahlee@Venable.com
202.344.4519

Honors and Awards

Top ranked in *Chambers USA*
2013

Thanks for Two Great Years!

Two years ago this week, Venable launched *Advertising Law News and Analysis*. During that time, there has been a rapid evolution in both the technologies leveraged by marketers and the regulations governing their campaigns. We hope you have enjoyed reading about those changes as much as we have enjoyed providing timely analysis of them. We continually refine the content and focus of the newsletter, and would love feedback. [Click here](#) and let us know what you think.

Thank you for your continued support and here's to another great year!

News

FTC Finalizes EnergyGuide Label Changes

On July 16, the Federal Trade Commission (FTC) announced its approval of changes to the EnergyGuide labels for refrigerators and clothes washers. The Commission has also updated the way comparative energy consumption information is displayed on labels for other types of appliances. The changes are intended to help consumers compare products.

Under the Energy Labeling Rule, new clothes washers, dishwashers, refrigerators, freezers, water heaters, room air conditioners, central air conditioners, furnaces, boilers, heat pumps, pool heaters, and televisions must bear the yellow EnergyGuide labels. The labels display the annual operating cost, an energy consumption rating, and a range for comparing the highest and lowest energy consumption for all similar models. The new Rule goes into effect on November 13, 2013.

[Click here](#) to read the FTC's press release about the changes and access the text of the *Federal Register* notice outlining the changes to the Rule.

Analysis

Brand Protection: What You Don't Know Can Hurt You

In recent years, counterfeiting has evolved from a localized industry concentrated on copying high-end designer goods, into a sophisticated global business that mass-produces and sells a vast array of fake goods, write Venable partners [Jeffrey D. Knowles](#) and [Roger A. Colaizzi](#) in the July issue of *Electronic Retailer* magazine.

They write that any company with a well-known brand or popular product should assume that its brand or product is already being counterfeited.

While there is no cookie-cutter solution to fight counterfeiting, gray market goods, and knockoffs, Knowles and Colaizzi outline a number of best practices companies should leverage to protect their brands. They write that Internet monitoring, physical monitoring, collaboration with Customs officials, and targeted enforcement are important aspects of brand protection strategies that can be tailored to meet the needs of each company.

[Click here](#) to read the full text of the article and to learn the ins and outs of each of the best practices listed above.



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



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

Staffing Announcements Set Tone at FTC

On June 17, Jessica Rich was named Director of the FTC's Bureau of Consumer Protection (BCP) by FTC Chairwoman Edith Ramirez. Rich replaces David Vladeck who returned to teaching law after leading BCP through several years of increasingly aggressive and far-reaching enforcement actions.

Marketers can expect "more of the same" from a Rich-led BCP, write Venable partners [Jeffrey D. Knowles](#), [Amy Ralph Mudge](#), and [Randal M. Shaheen](#) in the July issue of the *DRMA Voice*. After working closely with him for several years, they say, it is likely Rich will maintain some of the zeal with which Vladeck pursued marketers.

The article also discusses what marketers can expect from new FTC Chairwoman Ramirez and provides thoughts on President Obama's recent nomination of Terrell McSweeney to fill the vacant seat on the five-seat Commission.

[Click here](#) to read the full text of their commentary.

FCC Rules May Disconnect Marketing to Mobile Phones

On October 16, revised Federal Communication Commission (FCC) rules for calling or texting cell phones will take effect, write Venable attorneys [Ellen T. Berge](#) and [Annie H. Lee](#), with summer associate Thomas Chappell* in a recent post to Venable's advertising law blog.

Current FCC rules for calling cell phones require "prior express consent" – which may be written or oral – to make such calls when an autodialer is used. The revised rule requires "prior express written consent" for autodialed calls (or texts) made to cell phones for solicitation purposes. To obtain prior express written consent under the new rules, marketers must ensure that the consent is in writing, includes the written or digital signature of the person called, and contains the phone number the consenting person allows the telemarketer to contact.

These specific requirements, and outstanding questions about the definitions of some terms in the Rule, create potential areas of noncompliance. Marketers can be sure that plaintiffs' attorneys will be on the lookout for marketers who do not exactly follow the revised rule and will aggressively seek class action recovery.

[Click here](#) to read the full text of the post by Berge, Lee, and Chappell* on Venable's advertising law blog, www.allaboutadvertisinglaw.com.

* Chappell is a Venable summer associate and is not admitted to practice law.

What Corday Confirmation Means Going Forward

A recent decision by the U.S. Court of Appeals for the District of Columbia Circuit held that President Obama's recess appointments to the National Labor Relations Board (NLRB) were unconstitutional. This decision indirectly called into question the appointment of Richard Cordray to head the Consumer Financial Protection Bureau (CFPB) because his nomination was made in the same fashion and at the same time as the NLRB recess appointments. In turn, concerns about the validity of Cordray's nomination also called into question the structure and future of CFPB, as well as the validity of actions the Bureau took under Cordray's leadership.

Those concerns were put to rest on July 16, when the Senate confirmed Cordray as Director of the CFPB by a bipartisan vote.

If anything, Cordray's confirmation will solidify the Bureau's agenda, writes Venable partner [Allyson B. Baker](#) in a recent client alert. In some instances, she says, the Bureau might even pursue its agenda and stated goals more assertively than it has in the past. It also makes it more likely that the Bureau will maintain its single-director structure instead of, as some had speculated, morphing into a bipartisan, multi-commissioner format similar to the FTC.

[Click here](#) to read the full text of Baker's client alert.

Upcoming Events

NBJ Summit 2013 - Dana Point, CA

July 23-26, 2013

Bringing together nutrition industry leaders and influential power brokers, the 16th Annual NBJ Summit is the premier leadership event for strategic thinking and discussion on the progress, opportunities, and challenges facing the industry. Venable partners **Todd A. Harrison** and **Claudia A. Lewis** will join panels alongside industry thought leaders and senior executives to advise upon key regulatory matters affecting the medical foods segment and nutrition industry at large.

[Click here](#) to learn more.

DRMA Summer Networking Bash - Irvine, CA

July 25, 2013

Connect with direct response marketing industry leaders and professionals at the Venable-sponsored Direct Response Marketing Alliance (DRMA) Summer Bash. The DRMA is an alliance of professional marketers that facilitates business opportunities through networking, education, branding, and exposure.

[Click here](#) to learn more.

Webinar: "Legal Issues of Running Social Media and Mobile Sweepstakes and Contests"

August 6, 2013 1:00 p.m. - 2:30 p.m. EDT

Join Venable attorneys **Melissa L. Steinman** and **Mikhia E. Hawkins** as they host a live webinar that will provide an in-depth review of the legal issues relating to conducting a prize promotion through social and mobile media.

[Click here](#) to learn more and register.

ERA D2C Convention 2013 - Las Vegas

September 24-26, 2013

Venable is a proud sponsor of the Electronic Retailing Association's D2C Convention. Please join our Venable attorneys as they present two educational sessions and honor Venable partner **Jeffrey D. Knowles** as the winner of the 2013 ERA Lifetime Achievement Award.

To obtain a discounted exhibitor hall pass that will allow you access to the expo as a Venable guest, [click here](#) and register using the code **EI320D26**.

[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.

CALIFORNIA DELAWARE MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | www.Venable.com

© 2013 Venable LLP. This alert is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address. ATTORNEY ADVERTISING.

[Click here to unsubscribe](#)

575 7th Street, NW, Washington, DC 20004

© 2013 Venable LLP | www.Venable.com | 1.888.VENABLE