



January 16, 2014

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Analysis

It's Time to Comply with CA Do Not Track Disclosure Law

On January 1, California law AB 370 took effect. The law, which amends the California Online Privacy Protection Act (CALOPPA), requires operators of websites and online services to publicly disclose how they respond to "do not track" signals from consumers. In a recent client alert, Venable attorneys **Stuart P. Ingis**, **Brett A. Garner**, **Gregory J. Sater**, **Michael A. Signorelli**, and **Deborah A. Feinblum** explain the law and discuss how the compliance requirements differ for so-called "first party" and "third party" companies.

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

Overstock Deceptive Pricing Decision Hurts Retailers and Consumers

A California court recently decided that allegedly deceptive pricing practices will cost Overstock.com, Inc. (Overstock) more than \$6.8 million. In 2010, seven California district attorneys filed a suit against Overstock alleging the online retailer made false and misleading statements by routinely fabricating or inflating items' "advertised reference price" (ARP) on its website.

Overstock plans to appeal the decision, making this one of the few litigated cases involving sales pricing claims. And that is a good thing for consumers, write Venable attorneys **Amy Ralph Mudge**, **Randal M. Shaheen**, and **Matthew R. Rabinowitz** in a post to Venable's advertising law blog. The decision outlines investigatory responsibilities for companies making sales pricing claims that make compliance an impossibility for all but the most sophisticated retailers. If the decision stands, the trio write, the costs of such compliance programs will almost certainly have a negative impact on consumers.

[Click here](#) to read the full text of the blog post by Mudge, Shaheen, and Rabinowitz, which analyzes the decision and explains the decision's guidance on pricing disclosures and practices.

FTC Sweep Targets Deceptive Consumer Lending Ads

On January 9, the Federal Trade Commission (FTC) announced settlements with nine automobile dealers relating to the advertising of auto sales and leases in one of the Commission's largest ever enforcement actions involving automobile dealers. The enforcement action targeted allegedly deceptive practices and incomplete disclosures involving down payments, "0% APR" and "low monthly payment" claims, total purchase price, and so-called "trigger terms." In addition, the FTC found that a promotion used by three of the dealers was deceptive because no consumer had been able to claim a prize in the "match and win" promotion.

All consumer products or services companies that offer consumer financing, either directly or through resellers, should pay close attention to this enforcement action, write Venable attorneys **Suzanne Faye Garwood** and **Peter S. Frechette** in a recent post to Venable's advertising law blog. This enforcement action makes it clear that the FTC is monitoring advertising for consumer finance products, including local advertising, and taking a harsh view of fine print disclosures.

[Click here](#) to read the full text of the post by Garwood and Frechette on Venable's advertising law blog, www.allaboutadvertisinglaw.com. The post details the advertising practices the FTC targeted and why the commission found the dealers' claims and disclosures deceptive.

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

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Honors and Awards

Law Firm of the Year, National Advertising, *U.S. News and World Report*, 2012 and 2014



Top ranked in *Chambers USA* 2013



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

Chipotle Victory a Fiesta for Marketers

The scourge of marketers these days is the California-based class action lawsuit, writes Venable partner **Gregory J. Sater** in the January edition of *DRMA Voice*. It seems, he writes, there is little marketers can say in an advertisement that does not generate a demand letter or lawsuit from a California class action law firm. However, Chipotle's defeat of class certification last month in a false advertising lawsuit before a U.S. District Court in Los Angeles provides good news for all types of marketers defending California class actions.

[Click here](#) to read the full text of Sater's column and learn how the decision opens a new line of attack against class certification.

[Click here](#) to read a detailed analysis of the case by Venable attorneys **Edward P. Boyle** and **David D. Conway** in *Law360*.

Upcoming Events

12th Anti-Counterfeiting & Brand Protection West Coast Summit – San Francisco, CA

January 27-29, 2014

Join Venable partners **Marcella A. Ballard** and **Justin E. Pierce** at the 12th Annual Anti-Counterfeiting & Brand Protection West Coast Summit. Ms. Ballard will present "An Update on Anti-Counterfeiting Field Investigations" on January 28 at 1:15 p.m. PT, alongside a legal executive from a major motion picture studio. Mr. Pierce will join other industry professionals on a panel titled "Border Measures: How to Deal with the Importation and Transit of Counterfeit Goods" on January 29 at 1:45 p.m. PT.

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

ACI's 3rd Advanced Summit on Food & Beverage Consumer Fraud Litigation – San Francisco, CA

January 28, 2014

Venable partner **Todd A. Harrison** will present "Minimizing the Risk of 'Piggy Back' Class Actions Post-FDA and FTC Warning Letters and Enforcement Actions" at the American Conference Institute's 3rd Advanced Summit on Food & Beverage Consumer Fraud Litigation. Learn strategies to avoid warning letters, what can trigger negative attention from the government, how to craft a response to a government warning letter without creating a litigation roadmap, and more.

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

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

February 6, 2014 | 1:00 p.m. – 2:30 p.m. ET

As the regulatory landscape governing social and mobile media continues to evolve, marketers utilizing new media must adapt and be cognizant of potential legal issues. Join Venable partner **Melissa Landau Steinman** for this CLE-accredited webinar and learn the legal issues relating to conducting a prize promotion through social and/or mobile media.

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

ERA The Great Ideas Summit – Miami, FL

February 10-12, 2014

Join Venable, a proud sponsor of the "Thirsty Tuesday" reception, on Tuesday, February 11 from 6:00 p.m. to 7:30 p.m. ET at ERA's The Great Ideas Summit – the premier conference for electronic retailing executives as well as C-level marketers and suppliers. Meet the attorneys of **Venable's Advertising and Marketing Practice Group** on the show floor at booth number three.

[Click here](#) to register and receive a \$100 discount as a Venable guest when you use promotion code **EX85692**.

Digital Entertainment World – Los Angeles, CA

February 18-20, 2014

With content at its core, Digital Entertainment World is a leading business-to-business event and marketplace for global media and technology executives. Venable partner **Po Yi** will moderate a panel titled "The Role of Brands in Creating Effective, Impactful & Monetizable Digital Content" on February 19

at 11:15 a.m. PT. Venable partner [Justin E. Pierce](#) will moderate "Balancing Act: Embracing Innovation and IP Protection" on February 19 at 2:45 p.m. PT.

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

[ACI's Legal, Regulatory and Compliance Forum on Cosmetics – New York, NY](#)

February 19-21, 2014

Join Venable partner [Claudia A. Lewis](#) on February 19 at 2:00 p.m. ET for a "Working Group on Cosmetics 101" at the American Conference Institute's Legal, Regulatory and Compliance Forum on Cosmetics. This hands-on workshop will provide an overview of the law and regulations governing cosmetics. Key topics that will be addressed include the role and authority of the FDA in the cosmetics market, structure/function claims, label requirements, cosmetic promotion and advertising, adverse event reporting, and recalls.

[Click here](#) to learn more and 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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