

**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

Jeffri A. Kaminski
jakaminski@Venable.com
202.344.4048

Amy Ralph Mudge
amudge@Venable.com
202.344.4743

William R. Nordwind
wrnordwind@Venable.com
202.344.4964

Jonathan L. Pompan
jlpompan@Venable.com
202.344.4383

Randal M. Shaheen
rmshaheen@Venable.com
202.344.4488

John G. Moore
jgmoore@Venable.com
202.344.4592

Tyler Hale
sthale@Venable.com
202.344.4517

Analysis

Will Consumers, or Plaintiffs, Cheer GMO-Free Cheerios?

General Mills' announcement last week that it will remove all genetically modified organisms (GMOs) from its flagship Cheerios cereal created a media splash. In a recent post to Venable's advertising law blog, Venable attorneys [Amy Ralph Mudge](#), [Randal M. Shaheen](#), and [John G. Moore](#) write that the introduction of non-GMO Cheerios raises a number of interesting legal questions.

These questions include whether the non-GMO claim will be treated as a superiority claim, how regulators will treat the "free of" claim, and whether the claim will spawn class action lawsuits similar to those challenging "natural" claims made by food marketers. The authors believe many other brands will watch the rollout closely from both a marketing and legal perspective.

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

"Patent Troll" Reform Bills Moving through Congress

Patent litigation has become an enormous industry, affecting companies of every shape and size. In a recent article, Venable attorneys [Jeffri A. Kaminski](#), [William R. Nordwind](#), and [Tyler Hale](#) write that Congressional leaders are focused on the continued rise in, and perceived abusive nature of, patent litigation. In 2012, there were 5,189 patent suits filed, a 29% increase from the previous year, and more than half of those suits were brought by corporations created solely to enforce patent rights.

Because so-called "patent trolls" are perceived to be the culprit for the increase in patent litigation, several patent reform bills focused on patent trolls are under active consideration in the House and Senate. In the current political climate characterized by discord and obstruction, write Kaminski, Nordwind, and Hall, patent reform has drawn strong bipartisan support and cooperation. A number of bills are poised to move through both chambers in early 2014, and help may be on the way for beleaguered businesses.

[Click here](#) to read the full text of the article by Kaminski, Nordwind, and Hall, which includes short summaries of all the patent reform bills currently under consideration in the House and Senate.

Holiday Discounts: When Pricing Laws Attack

By some accounts, discounting by retailers this holiday season has been even more widespread than usual. In a recent post to Venable's advertising law blog, Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) write that although the Federal Trade Commission long ago concluded that enforcement actions against aggressive "discount" claims were potentially counterproductive and discouraged pro-consumer discounting, the same cannot be said for the states. Many states, such as California and New York (and in some cases counties), continue to enforce their own state and local pricing laws.

They write that anyone taking the time to read the various state pricing laws will quickly understand that complying with all the varying state pricing laws is impossible or highly impractical for national retailers. Even if strict compliance were possible, it would likely put the company out of business as consumers flocked to rivals who were discounting in violation of one or more state laws. The challenge for retailers, they write, is to understand how to balance compliance requirements with business realities.

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

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

CFPB Examines Disparity in Spending on Financial Services Marketing, Education

Last month, the Consumer Financial Protection Bureau (CFPB) released a study of consumer financial services marketing which found that it could be difficult for consumers to find objective information. The study, which was commissioned to understand the range of information sources consumers could encounter when making financial decisions, found that financial services companies spend roughly 25 times more on the marketing of financial products than they spend educating consumers about those products.

The industry spends roughly \$17 billion each year on marketing (excluding marketing of retirement products, college loans, and investment products) while spending approximately \$670 million on financial education. In a recent article, Venable partner **Jonathan L. Pompan** writes that he expects the CFPB will use the results to develop priorities in the areas of financial education, policymaking and supervision, and enforcement.

[Click here](#) to read Pompan's analysis of the study, which includes a detailed breakdown of spending by industry sector.

Upcoming Events

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

January 27-29, 2014

Join Venable partners **Marcella Ballard** and **Justin E. Pierce** at the 12th Annual Anti-Counterfeiting & Brand Protection – West Coast conference. 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

Venable partner **Po Yi** will moderate the panel titled "The Role of Brands in Creating Effective, Impactful & Monetizable Digital Content" at Digital Entertainment World on February 19 at 11:15 a.m. PT. This panel of digital content creation experts will discuss the intricacies of partnerships between brands, producers, talent and distributors, as well as cover strategies for producing, distributing and monetizing effective branded entertainment across various platforms and devices.

[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.

CALIFORNIA DELAWARE MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

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575 7th Street, NW, Washington, DC 20004

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