



April 24, 2014

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

Charles K. Kolstad
ckkolstad@Venable.com
310.229.9954

Amy Ralph Mudge
amudge@Venable.com
202.344.4743

Ian D. Volner
idvolner@Venable.com
202.344.4814

D. E. Wilson, Jr.
dewilson@Venable.com
202.344.4819

Mark S. Goodrich
msgoodrich@Venable.com
202.344.4715

Honors and Awards

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

News

FDA Unveils Long-Awaited E-Cig Regs

Today, the Food and Drug Administration (FDA) released sweeping proposed regulations that will extend the agency's oversight to the multi-billion dollar electronic cigarette industry and other tobacco products not covered by the 2009 Family Smoking Prevention and Tobacco Control Act.

Under the proposed rules, items that meet the statutory definition of a "tobacco product" but are not already under the FDA's authority, such as electronic cigarettes, cigars, pipe tobacco, nicotine gels, and waterpipe (or hookah) tobacco would be "deemed" subject to FDA regulation. The FDA currently regulates cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco.

The FDA will accept comments on the rules from interested parties until June 30, 2014.

[Click here](#) to read the full text of the *New York Times* story.

[Click here](#) to read the FDA's press release announcing the proposed changes and access the full text of the regulations.

Analysis

Keep Tabs on TCPA Litigation...Or Face Your Own

With all of the recent litigation under the Telephone Consumer Protection Act (TCPA), marketers know that telemarketing compliance can be tricky. The Federal Communication Commission's (FCC) October 2013 changes to the TCPA rule were intended to harmonize the FCC's rule with the Federal Trade Commission's (FTC) Telemarketing Sales Rule (TSR). However, many, including FCC Commissioner Michael O'Rielly, have pointed out that businesses need additional guidance from the FCC to clearly understand the legal standard and avoid potential litigation.

In the absence of that guidance, write Venable attorneys [Ian D. Volner](#) and [Mark S. Goodrich](#) in a recent blog post, it is business as usual for plaintiffs' attorneys, who are filing numerous TCPA lawsuits every week. Until the FCC clarifies the outstanding questions, the best marketers can do is keep an eye on litigation and design their campaigns to avoid litigation hot spots. To assist in this issue spotting, Venable is now compiling noteworthy TCPA filings that provide a pulse on the type of actions that plaintiffs are bringing under the regulation.

[Click here](#) to read the full text of the blog post by Volner and Goodrich and to access Venable's most recent compilation of noteworthy TCPA cases.

[Click here](#) to read the blog post by FCC Commissioner O'Rielly about the need for greater TCPA clarity.

The Stomach-Turning Fight Over NAD Jurisdiction

Most jurisdictional battles at the National Advertising Division (NAD) take place in the context of a Lanham Act case brought during an NAD challenge, writes Venable partner [Amy Ralph Mudge](#) in a recent post to the firm's advertising law blog. However, she writes, a recent case sheds light on NAD's



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

views about the scope of its jurisdiction when the claims at issue are the subject of another court's decision.

The NAD challenge took issue with claims that "Tylenol provides you strong pain relief without irritating your stomach the way Aleve or even Advil can." Tylenol argued the decision in a 1987 Lanham Act case decided in the Southern District of New York addressed a similar claim and should preclude NAD from considering the current challenge.

[Click here](#) to read the full text of Mudge's blog post and learn more about the NAD's decision in this case.

Bitcoin Creates Buzz, as Well as Tax and Compliance Issues

As the use and acceptance of Convertible Virtual Currencies (CVCs), such as Bitcoin, becomes more mainstream, it should not be surprising that there are numerous questions about how individuals and corporations should classify CVCs for tax purposes, write Venable partners [Charles K. Kolstad](#) and [D.E. Wilson, Jr.](#) in a recent client alert.

The answer, at least according to the Internal Revenue Service, is that CVCs should be treated like property that can appreciate and depreciate. And, write Kolstad and Wilson, the implications of this guidance for private and corporate U.S. users of CVCs are immediate and potentially very expensive.

[Click here](#) to read the full text of the client alert by Kolstad and Wilson.

Upcoming Events

Response Expo – San Diego, CA

April 29-May 1, 2014

Please join Venable at the Response Expo 2014, which brings together key decision-makers and industry leaders from the corporate marketing arena and direct response spectrum. Visit us at **booth #212** and meet attorneys in our [Advertising and Marketing Practice Group](#). Also, be sure to join us at the "Venable Justice League" networking reception on Wednesday, April 30 from 4:30 - 6:00 p.m. PT on the Aqua Patio.

To obtain a complimentary show floor pass that will allow you access to the expo as a Venable guest, [click here](#) and register using the promotion code **EXH2014**.

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

CARU West Coast Conference 2014 – Los Angeles, CA

May 6-7, 2014

The fourth annual Children's Advertising Review Unit (CARU) West Coast Conference boasts practical information to enhance legal professionals' and marketers' ability to navigate CARU's Self-Regulatory Program for children's advertising. Venable partner [Gregory J. Sater](#) will present "Hot Button Roundup: Advanced Claim Substantiation, Sensitive Issues, and Special Considerations for Advertising and Marketing Within CARU Guidelines" on Wednesday, May 7 at 2:15 p.m. PT. Join him for an advanced discussion on complying with advertising guidelines with an eye towards optimizing creativity.

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

New York City Bar Association – New York, NY

May 16, 2014

Venable partner [Melissa Landau Steinman](#) will participate in the New York Bar Association's "Sweepstakes, Promotions & Marketing Laws: Comprehension & Compliance in a Digital/Mobile Environment" program. Join Ms. Steinman as she presents "Loyalty Programs and Gift Cards" on Monday, May 16 at 11:25 a.m. ET.

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

Media Finance Focus 2014 – Miami, FL

May 19-21, 2014

Venable is a proud sponsor of Media Financial Management Association's Media Finance Focus 2014, an annual conference that convenes media, financial, and business executives. Venable partner [Stephanie M. Loughlin](#) will present "Federal Tax Update" on Monday, May 19 at 2:40 p.m. ET. Venable partners [Melissa Landau Steinman](#) and Stephanie M. Loughlin will present "Gift Cards, Coupons, and Loyalty Programs" on Tuesday, May 20 at 2:00 p.m. ET. Also, be sure to join Venable partners [Po Yi](#) and Melissa L. Steinman for "Advertising and Marketing on Social Media: Staying Ahead of the Curve" on Tuesday, May 20 at 3:00 p.m. ET.

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

ERSP 10th Anniversary and ERA Government Affairs Fly-in – Washington, DC

May 20-21, 2014

Venable is a proud sponsor of the Electronic Retailing Self-Regulation Program's (ERSP) 10th anniversary program celebrating a decade of self-regulation. On Tuesday, May 20, Venable partner [Jeffrey D. Knowles](#) will present "Broadening the Scope: Self-Regulation in the Telemarketing Industry and Beyond" as part of an afternoon of panel discussions on advertising self-regulation in the direct response industry. Venable is also a sponsor of the ERA Government Affairs Fly-in on May 21, which brings together direct retailing industry leaders to discuss the current political landscape and what to expect in the year ahead.

[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

1.888.VENABLE | www.Venable.com

© 2014 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.

575 7th Street, NW, Washington, DC 20004

© 2014 Venable LLP | www.Venable.com | 1.888.VENABLE