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Issue Editors**Jeffrey D. Knowles**jdknowles@Venable.com
202.344.4860**Roger A. Colaizzi**racolaizzi@Venable.com
202.344.8051**Gary D. Hailey**gghailey@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**Amy Ralph Mudge**amudge@Venable.com
202.344.4743**Randal M. Shaheen**rmshaheen@Venable.com
202.344.4488**David D. Conway**ddconway@Venable.com
202.344.4489**Shahin O. Rothermel**sorothermel@Venable.com
202.344.4550**Honors and Awards**Law Firm of the Year, National
Advertising, *U.S. News and World
Report*, 2012 and 2014**News**

"It's Like Using a Howitzer to Attack an Ant Hill" - Knowles Provides Context to Government's "Operation Choke Point"

In 2013, the Consumer Protection Working Group of the multi-agency Financial Fraud Enforcement Task Force launched an initiative to combat large-scale consumer fraud and "choke off" bad actors' ability to process credit card and Automated Clearing House (ACH) transactions by holding banks and payment processors liable for acts committed by the merchants they service.

Many in the payments industry and on Capitol Hill have voiced concern that legitimate merchants and consumers are bearing the brunt of an overly aggressive initiative, while the campaign is not creating a significant reduction in consumer fraud.

"It's like using a howitzer to attack an ant hill," Venable partner **Jeffrey D. Knowles** said in a feature about "Operation Choke Point" published in the October Edition of *Transaction Trends*.

Read the *Transaction Trends* article to [learn more about "Operation Choke Point."](#)

Analysis

Companies May Get a Peek into FTC's Consumer Complaint Database

Not many companies know that the Federal Trade Commission (FTC) maintains an enormous consumer complaint database known as the FTC Consumer Sentinel Network. This secure online repository contains roughly 20 million consumer complaints, writes Venable attorney **David D. Conway** in a recent post to Venable's advertising law blog.

The Commission uses the network to identify unlawful business practices and to build evidence for litigation. While the FTC carefully guards the contents of the database, and has long refused to make it publicly available, a recent decision by the U.S. District Court for the District of Columbia suggests that businesses who want to peek into the FTC's consumer complaint files may be able to do so via a carefully tailored Freedom of Information Act (FOIA) request.

Read the full blog post to [learn more about the potential benefits – and hazards – of using FOIA to pry Sentinel open.](#)

[Read the Court's decision in *Ayuda v. FTC.*](#)

Time to Get Smart on "Brain" Claims

You don't have to be a genius to know advertising claims about cognitive performance are an enforcement



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priority for the FTC. Edith Ramirez, Chairwoman of the Commission, said so herself at the recent National Advertising Division (NAD) conference. And, the FTC's recent settlements with WordSmart and BrainStrong concerning cognitive claims drive the point home, write Venable partners [Amy Ralph Mudge](#) and [Randal M. Shaheen](#) in a recent post to Venable's advertising law blog.

While the state of the FTC's expected definition of "competent and reliable evidence" (which both settlements require, but in different ways) is up in the air, the authors write that the NAD continues to apply a more traditional standard for substantiating health claims. They point to NAD's decision regarding the SmartX Premium Brain Supplement as a good roadmap to how the self-regulatory body would evaluate the strengths of the science behind cognitive claims.

Read the blog post and [get much smarter about substantiating cognitive claims](#).

Read the FTC press releases about the [WordSmart settlement](#) and the [BrainStrong settlement](#).

Oxodegradable Claims? FTC Says Don't Hold Your Breath

On October 21, the FTC issued warning letters to fifteen marketers of so-called "oxodegradable" plastic bags. Oxodegradable plastic is made with an additive that speeds the degradation when the material is in the presence of oxygen. The FTC's letters contend that oxodegradable products will biodegrade, just not in the oxygen-poor landfills where the bags are likely to end up.

The FTC's 2012 revisions to its "Green Guides" specifically cautioned that unqualified "degradable" or "biodegradable" claims were deceptive if an item disposed of in its usual manner would not completely decompose within one year, writes Venable attorney [Shahin O. Rothermel](#) in a recent post for the firm's advertising law blog.

These letters are not the first time the FTC has addressed biodegradability, she writes. And if the past is any indicator, it probably won't be the last. Just last year, the FTC settled five enforcement actions concerning biodegradability claims for plastic.

Read Rothermel's blog post to learn more about the FTC's "Green Guides" and how to develop sustainable "green" claims.

Click here to [review the FTC's "Green Guides."](#)

Upcoming Events

[Association of Independent Commercial Producers' Business Affairs Boot Camp – Los Angeles, CA](#)
October 28, 2014 | 11:30 a.m. PT

Venable partner [Douglas C. Emhoff](#) will participate in the "Lawyers on the Clock" panel during the AICP Business Affairs Boot Camp. During the session, members of the panel will discuss legal issues facing commercial producers and advertising agencies. The catch is the attorneys must provide the attendees with actionable insights in two minutes or less.

[Click here for more information and the register.](#)

[ad:tech New York – New York, NY](#)

November 5-6, 2014

ad:tech is where the marketing, technology, and media communities come together to find the right solution providers, network with industry players, and stay abreast of emerging trends in the marketplace. Visit Venable at **booth 405** on the exhibit floor.

Click here to [learn more about the conference and register](#). Use code **JoinMeAtAdtech** for a 25% discount on registration.

[Brand Activation Association's 36th Annual Marketing Law Conference – Chicago, IL](#)

November 5-7, 2014

Venable is a Platinum Sponsor of the 36th Annual BAA Marketing Law Conference, the premier forum for marketing and advertising legal and business professionals. Hear from 120 of the nation's leading executive and legal speakers from the Marketing and Advertising, Privacy, Social Media and IP Law Bars, including Venable partners [Amy Ralph Mudge](#), [Melissa Landau Steinman](#), and [Po Yi](#), as well as in-house counsel from major brands and prominent federal and state regulators.

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

Click here to [learn more about Venable's BAA cocktail reception on November 5](#).

The Canadian Institute's 21st Annual Advertising & Marketing Law – Toronto, ON January 26-27, 2015

Giving great advice means recognizing, anticipating, and reacting to the latest developments. Equip yourself to do just that at The Canadian Institute's 21st Annual Advertising & Marketing Law program. Stay current in this dynamic field with practical, in-depth, and innovative strategies and solutions from practice leaders, industry experts, and key regulators. Venable partner [Amy Ralph Mudge](#) will discuss third-party liability, native advertising, and the rise of class actions in Canada during her presentation "Emerging Issues to Watch" at 1:30 p.m. on January 27.

Click here to [learn more about the conference and register](#). Use the code **265SAME** when registering to save \$200.

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