

**Issue Editors**

Jeffrey D. Knowles
jdknowles@Venable.com
202.344.4860

Roger A. Colaizzi
racolaizzi@Venable.com
202.344.8051

Gary D. Hailey
gshailey@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

Justin E. Pierce
jpierce@Venable.com
202.344.4442

Andrew F. Pratt
afpratt@Venable.com
202.344.4389

Andrew D. Price
adprice@Venable.com
202.344.8156

Randal M. Shaheen
rshaheen@Venable.com
202.344.4488

Ian D. Volner
idvolner@Venable.com
202.344.4814

Armand J. (A.J.) Zottola
ajzottola@Venable.com
202.344.8546

Analysis:

The Brand Protection Weapon You've Never Heard Of

The US International Trade Commission (ITC) investigates imports connected with unfair acts and directs US Customs and Border Protection (CBP) to exclude those products from the United States. In 2012, roughly 75% of all CBP exclusions resulted from ITC investigations into brand protection claims.

When the power of an ITC decision is coupled with the speed, ease, and affordability of the process, write Venable partners **Justin E. Pierce**, **Andrew F. Pratt**, and **Andrew D. Price** in the most recent edition of *World Trademark Review*, it begs the question of why more companies do not deploy the ITC as a weapon in the brand protection war.

Read the full article to [learn what unique factors make the ITC's decisions so potent and what brands need to know about the process.](#)

Five Things to Know Before Making an App for That

Mobile apps are everywhere, write Venable attorneys **Armand J. (A.J.) Zottola** and **Morgan E. Brubaker** in a recent client alert, and there seems to be an app for everything. But before companies jump on the app bandwagon, they need to understand and consider the unique intellectual property, ownership, privacy, data security, and advertising considerations that make apps more than just another piece of software.

Read the client alert to [learn what app development pitfalls could result in significant legal liability and how to avoid them.](#)

FCC Says it's Time to Face the Fax

Can you remember the last time you received a fax? It's surprising, write Venable attorneys **Ian D. Volner**, **Mark S. Goodrich**, and **Andrew L. Steinberg*** in a recent post to Venable's advertising law blog, that many associations, businesses, and other entities still blast out marketing faxes like it is 1999. Now the Federal Communications Commission (FCC) is drawing more attention to this less prominent form of advertising.

Last month, the Commission issued an order holding that opt-out requirements under the Junk Fax Prevention Act (JFPA) extend to all fax advertisements, even those sent with recipients' prior permission. This decision effectively resolves an area of contention, even within the FCC, about whether all fax ads must comply with the requirements.

Because of this contention, the FCC granted a "limited retroactive waiver" of the opt-out requirements to certain fax ad senders who apply for the waiver before April 30, 2015. While it is unclear whether courts will defer to these waivers in pending or future junk fax litigation, the authors write, the waivers' potential as a powerful shield against class action plaintiffs will likely lead organizations to apply.

Read the full blog post to [learn more about the FCC's decision, the retroactive waiver and the FCC requirements that now apply to all marketing fax senders.](#)

[Read the text of the FCC's new fax opt-out requirements.](#)

**Andrew L. Steinberg is a Venable associate, and not yet admitted to practice law.*

Robert P. Davis
rpdavis@Venable.com
202.344.4514

Morgan E. Brubaker
mebrubaker@Venable.com
202.344.4832

Mark S. Goodrich
msgoodrich@Venable.com
202.344.4715

Andrew L. Steinberg
alsteinberg@Venable.com
202.344.4202

Honors and Awards

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



Top ranked in *Chambers USA* 2014



Top-Tier Firm *Legal 500*



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FTC Tackles Trolls

Last week, the Federal Trade Commission (FTC) announced a settlement with several "patent assertion entities" (AKA "patent trolls") over allegations that the trolls sent letters to thousands of small businesses asserting that they "likely" were using infringing technology and offering to negotiate an appropriate license with the patent holder.

When recipients failed to comply with the letters, write Venable attorneys **Randal M. Shaheen** and **Robert P. Davis** in a recent post to the firm's advertising law blog, the trolls followed up with increasingly aggressive – but empty – threats of litigation. It was on those statements that the FTC built its case. The authors write that while the settlement is great news for business owners, the settlement could make one popular hammer in the litigation toolbox riskier to use.

Read the full alert to [learn how this settlement may affect common pre-litigation posturing](#).

Click here to [read the FTC's press release and access the consent order](#).

Upcoming Events:

"Perfecting the Charitable Promotion: Legal, Financial and Practical Considerations for Commercial Co-Ventures" at the GWSCPA 2014 Nonprofit Finance and Accounting Symposium – Washington, DC

December 18, 2014 | 9:10 – 10:25 a.m. ET

In this program, you will hear from three professionals, including Venable attorney **Kristalyn J. Loson**, who are well versed in the related areas of promotions and charitable fundraising. They will explain the myriad legal and regulatory issues involved, as well as the latest developments in promotional campaigns. By attending this program, nonprofits will get a better understanding of the state regulatory requirements, general advertising concerns, and relevant federal tax issues they need to navigate in order to tap into the power of promotional campaigns.

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

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.

[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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