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202.344.4715**Analysis:**

The *Lexmark* Decision and the Lanham Act Take a Trip South of the Border

The headline may sound like the start of a corny advertising law joke, but it is not. It is a tale of two drugs named Flanax, and it has sobering lessons for long-established brands about the importance of a global brand protection strategy, writes Venable attorney [Kimberly Culp](#) in a recent post to Venable's advertising law blog.

Bayer has distributed a brand of pain relief medicine called Flanax in Mexico for decades. Belmora LLC also distributes a pain relief medicine called Flanax in the United States. After Bayer successfully petitioned the Trademark Trial and Appeal Board to cancel Belmora's registered trademark for Flanax, Belmora sought review of the Trademark Board's decision in a case brought in the Eastern District of Virginia. The Court sided with Belmora, ruling that because Bayer is the owner of a foreign mark that is not registered in the United States and has never been used in commerce in the United States, it lacked standing to challenge Belmora before both the Trademark Board and the Court.

Read the full blog post to [learn why the Decision, and its reliance on the Supreme Court's *Lexmark* decision, show that companies must think globally and act locally to protect their brands.](#)

New Jersey Now Allows Certain Telemarketing Calls to Cell Phones

New Jersey traditionally has had the most onerous state Do Not Call law, which prohibited all telemarketing sales calls to cell phones, writes Venable attorney [Daniel S. Blynn](#) in a recent post to Venable's advertising law blog. The law did not even allow such calls to be made with the consumer's consent.

The good news for marketers, Blynn writes, is that on January 29, 2015, New Jersey Governor Chris Christie signed into law state Senate bill 1382. The new law significantly loosens the state's restrictions on telemarketing calls to cell phones and clarifies the state's Do Not Call law to prohibit only unsolicited telemarketing sales calls to cell phones.

Read the full text of Blynn's post to [learn why even though sales calls to New Jersey cell phones may now be possible, TCPA compliance remains the dominant issue.](#)

FCC Puts Itself on DNC List after Unsolicited Calls from Senators

It seems like every few weeks a new court decision weighs in on how to interpret the Telephone Consumer Protection Act (TCPA). In addition, trade associations and telemarketers have peppered the Federal

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Communications Commission (FCC) for clarification on the Act. Now, fourteen United States Senators have weighed in. Rather than opining on the specific meaning of any definitions, the Senators provided the Commission with general direction on the approach it should take when clarifying the rules. The Senators' clear message, write Venable attorneys [Ian D. Volner](#), [Laura Arredondo-Santisteban](#), and [Mark S. Goodrich](#) in a recent post to the firm's advertising law blog, is don't weaken the TCPA's protections for consumers.

The authors write that only time will tell whether the FCC will provide respite to the industry, emphasize broader consumer protection, or perhaps take a middle approach of issuing a proposed rulemaking. However, the Senators' letter is evidence that the TCPA is becoming even more of a hot topic, and guidance from the FCC could be coming down soon.

Read the full text of the blog post to [learn how recent court rulings, petitions from interested parties and the Senators' input are likely to shape TCPA guidance.](#)

Upcoming Events:

[FDLI Food Week 2015 – Washington, DC](#)

February 24-25

Venable attorney [Heili Kim](#) will present "Marketing Trends – How America's Food Choices are Changing" on February 24 from 9:00 - 9:45a.m. at the FDLI Food Week 2015 Conference. Food Week 2015 is a unique combination of two advanced conferences addressing the latest emerging issues in food regulation. The agenda on February 23 will focus on the topic of food safety and globalization. The agenda on February 24 will center on food advertising, labeling, and litigation – with panels highlighting class action litigation, claim substantiation, and marketing trends.

[Follow this link to view the Food Week 2015 agenda and register for the event.](#) Use promo code **FOOD15** to take advantage of an exclusive 15% discount.

[2015 Grocery Manufacturers Association Litigation Conference – Fort Myers, FL](#)

February 24-26

Venable partner [Angel Garganta](#) will lead "'All Natural' and other Industry Class Action Litigation: Year in Review" on Wednesday, February 25 from 9:10 to 10:00 a.m. This session will review recent developments in class action litigation against the food and beverage manufacturers, including updates on "all natural" claims and new litigation aimed at private label products.

For more information and to register, please [visit the GMA Litigation Conference website.](#)

["The Future of Self-Regulation for the Lead Generation Market" at LeadsCon 2015 – Las Vegas, NV](#)

March 4, 2015 | 1:30 - 2:10 p.m. PT

Venable's [Jonathan L. Pompan](#), CFPB Task Force Co-Chair and Partner, will participate in "The Future of Self-Regulation for the Lead Generation Market" for LeadsCon 2015.

Tired of the crackdown by the FTC, CFPB, and state Attorneys General and regulation that is raising costs and limiting access to the marketplace? Learn about ways to develop industry standards and guidelines and opportunities to use independent, transparent, oversight to promote compliant lead generation activities to ensure consumer confidence. Regulation and enforcement can be costly, so a well-constructed and active self-regulatory program can help companies save money, preserve markets, and avoid over-regulation by government.

For more information, please visit the [LeadsCon website.](#)

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