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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**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**Ellen Traupman Berge**etberge@Venable.com
202.344.4704**Leonard L. Gordon**lgordon@Venable.com
212.370.6252**Jonathan L. Pompan**jlpompan@Venable.com
202.344.4383**Randal M. Shaheen**rmshaheen@Venable.com
202.344.4488**Andrew E. Bigart**aebigart@Venable.com
202.344.4323**Announcement:****Venable Launches *Digital Media Link***

This week, Venable launched *Digital Media Link*, a new publication from Venable's **Digital Media Practice Group**. Just as you count on this newsletter to deliver timely analysis of new developments in advertising and marketing law, *Digital Media Link* will focus on major issues and case developments in digital media.

As digital technology continues to reshape every aspect of advertisers' and marketers' interactions with consumers, add *Digital Media Link* to your list of must-read resources.

[Read the inaugural issue of *Digital Media Link* here.](#)

If you would like to receive *Digital Media Link* in your inbox, [click here to subscribe.](#)

Analysis:**Back to the TSR**

When the Federal Trade Commission (FTC) decided not to update its rule governing pre-notification negative option marketing last summer, many were surprised that it would pass up an opportunity to tighten the rules on a practice high on its hit list. However, the Telemarketing Sales Rule (TSR) was right behind the negative option rule on the FTC's to-do list, write Venable attorneys **Jeffrey D. Knowles**, **Ellen T. Berge**, and **Mark S. Goodrich** in the most recent edition of *Electronic Retailer Magazine*.

The authors write that similar to the Federal Communications Commission's Telephone Consumer Protection Act rules, the TSR includes the FTC's version of Do Not Call rules and restrictions on the use of prerecorded message calls. The TSR also defines and prohibits deceptive and abusive telemarketing acts and practices.

They add that a casual reading of the FTC's review and request for public comment identifies the Commission's hot-button telemarketing issues. It also provides insight into possible reasons the FTC chose not to revise the negative option rule last summer.

Read the article to [learn which telemarketing issues top the FTC's list.](#)

CFPB Takes an Interest in First-Party Collections

Successful marketing leads to sales, but sometimes those sales don't result in timely payments. When that happens, merchants and creditors often try to recover losses through collections, write Venable attorneys **Jonathan L. Pompan**, **Andrew E. Bigart**, and **Alexandra Megaris** in a recent post to Venable's advertising law blog.

Although "first-party" collections are largely exempt from the Fair Debt Collections Practices Act (FDCPA),

Mark S. Goodrich
msgoodrich@Venable.com
202.344.4715

Alexandra Megaris
amegaris@Venable.com
212.370.6210

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the authors write that the Consumer Financial Protection Bureau (CFPB) has begun using its enforcement powers to challenge first-party collection practices, including those used by retail merchants and other creditors. And, if two recent CFPB enforcement actions are any indication, there are significant risks for merchants seeking to collect outstanding payments.

Read the blog post to [learn what steps "first-party" companies should take to mitigate the legal risk of collections.](#)

As the Pomegranate Turns: the Saga of Forbidden Fruit Claims

Last week, the long-running battle between POM Wonderful and the FTC took a major turn, write Venable partners [Leonard L. Gordon](#) and [Randal M. Shaheen](#) in a recent post to Venable's advertising law blog. In its decision, the DC Circuit Court of Appeals affirmed in part and reversed in part the FTC's Order that POM had made deceptive claims about its pomegranate juice products.

Likely the most interesting part of the decision for marketers, the authors write, is that the Court's POM opinion should help move the FTC away from a one-size-fits-all approach of requiring at least two randomized and controlled human clinical trials to substantiate certain types of claims. The decision may also give advertisers more leverage in settlement discussions.

Read the full blog post to [learn more about the implications of the Court's POM opinion.](#)

[Click here to read a copy of the Court's opinion.](#)

Upcoming Events:

Digital Entertainment World – Los Angeles, CA

February 10-12

Venable LLP is pleased to sponsor Digital Entertainment World (DEW). DEW is the hub for those in the business of creating and monetizing digital entertainment content. Venable partner [Po Yi](#) will moderate a panel titled "The Role of Brands in Creating Effective, Impactful & Monetizable Digital Content" on February 11 from 11:35 a.m. - 12:15 p.m. PT, and Venable partner [Brett Garner](#) will speak on the panel "The Artist and Technology" on February 11, from 5:15 p.m. - 5:55 p.m. PT.

[Follow this link to view the DEW agenda and register for the conference.](#)

"Legal Issues in Running Social Media and Mobile Sweepstakes and Contests," a Lorman Webinar

February 12, 2015 | 1:00 p.m. - 2:30 p.m. ET

As consumers shift more of their time and attention from traditional forms of media to social and mobile media, marketers are devoting more resources to reaching eyes and ears through new media. And while there's nothing new about prize promotions such as sweepstakes and contests, merging such promotions with social and mobile media can be a particularly efficient and effective way of engaging consumers. Venable partner [Melissa Landau Steinman](#) will present a webinar on the ever-evolving laws and regulations governing prize promotions. She will also discuss how conducting a prize promotion through new media can raise a host of – sometimes unanticipated – legal issues.

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

ABA Section of Antitrust Law's Consumer Protection Conference – Washington, DC

February 12, 2015 | 9:35 – 11:00 a.m. ET

Venable partner [Randal M. Shaheen](#) will participate in a panel titled "Advertising Substantiation and Third Party Liability" that will explore whether and how standards for claim substantiation and third party liability for channel partner marketing should change to meet new realities. The panel will take place from 9:35 a.m. – 11:00 a.m. ET.

[Follow this link to learn more about the event and register to attend.](#)

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 a.m. - 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. ET. 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 labels products.

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

[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.

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