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Analysis:

Supreme Court to Consider Whether Settlement Offer to Named Plaintiff Moots TCPA Class Action

Plaintiffs' attorneys are aggressively pursuing class action lawsuits alleging violations of The Telephone Consumer Protection Act (TCPA). However, write Venable attorneys **Ari N. Rothman**, **Molly T. Cusson**, and **Mark S. Goodrich** in a recent post to the firm's advertising law blog, companies are pushing back. As evidence of this trend, they point to a case in which the United States Supreme Court will soon decide whether a defendant can "pick off" the named plaintiff in a TCPA class action – and moot the putative class claims – by making a Rule 68 offer of judgment before the putative class representative files a motion for class certification.

Read the full blog post to [learn how the case could be a game changer for TCPA class actions](#).

[Read the petition for Writ of Certiorari in the case here.](#)

FTC Weighs in on Endorsements and Testimonials... Again

Last week, the FTC followed up on its 2013 revisions to its *Guides Concerning the Use of Endorsements and Testimonials in Advertising* when it released an updated FAQ section for the Guides that provides enhanced guidance for marketers about disclosure requirements in a number of common online endorsement scenarios, especially those conveyed via social media platforms.

In the June edition of the *DRMA Voice*, Venable attorneys **Jeffrey D. Knowles** and **Mark S. Goodrich** summarize some of the FTC's new guidance. [Read the article to learn the basics.](#)

Venable attorneys **Ellen T. Berge**, **Randal M. Shaheen**, **Po Yi**, and **Mark S. Goodrich** provide readers with a deeper dive into the new FAQs in a post to the firm's advertising law blog, the first in a series about the FAQs. [Read the post for more in-depth insights.](#)

If primary source material is more your speed, [read the full text of the FAQs here.](#)

Coordination Key to Avoiding Implied Warranty Claims

Rather than making implied claims about what is covered in a warranty, companies should strive to be clear and explicit about what is and is not covered in a warranty, writes Venable attorney **Kimberly Culp** in a recent post to the firm's advertising law blog. This is necessary because determined and creative consumers and plaintiffs often succeed in finding implied warranties despite the company's best efforts to be careful and precise in drafting the warranty.

Culp writes that manufacturers and sellers, those who compose the marketing and product claims or make the sale, cannot be isolated from those who draft the express warranties. Coordination among the many constituencies responsible for making statements about a product is imperative when enterprising plaintiffs

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



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are reviewing all of your product statements as a whole and trying to find an implied warranty claim.

Read the full blog post to [learn more about strategies for preventing implied warranty claims](#).

Advertising Law Enters the Political Process

It is rare for the Lanham Act and state law deceptive advertising cases to involve political candidates. But, a case in Virginia shows how advertising law can be used to help candidates who have been harmed by entities trying to raise money by using their name and likeness, write Venable partners **Ronald M. Jacobs** and **Amy Ralph Mudge** in recent posts to the firm's advertising and political law blogs.

The fuss began when a political action committee (PAC) decided it would raise money, ostensibly to help a Republican win the Virginia governor's race. However, the candidate later discovered that he had received only a small amount of the money raised by the PAC that used his name and image, and that the PAC did not execute its promises of a get-out-the-vote campaign for him.

Although the case settled quickly, Jacobs and Mudge write that the case brought by the candidate provides a roadmap for how to frame political fundraising emails as commercial speech related to transactions.

Read the full blog post to [learn more about the case and the Lanham Act argument advanced by the candidate's counsel](#).

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