VENABLE LLP

advertising and marketing

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In This Issue

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Honors and Awards

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

Top ranked in *Chambers USA*

We'll See You in Two Weeks
Venable's *Advertising Law News and Analysis* will not publish next week because of the Fourth of July holiday. We hope you enjoy a happy and safe holiday with friends and family. We look forward to returning to your inbox on July 9.

News:

Venable's Knowles and Ingis Named *NLJ* Regulatory and Compliance Trailblazers

Venable partners **Jeffrey D. Knowles** and **Stuart P. Ingis** were named 2015 Regulatory and Compliance Trailblazers by the *National Law Journal*. Each year, the legal trade publication honors a small number of elite attorneys who have moved the needle in the ever-changing world of regulatory and compliance law. Knowles, who was selected for his work that broke new ground while defending clients from new cross-agency enforcement initiatives, and Ingis, who was selected for his role in influencing privacy and data security law over the past 20 years, were the only Venable attorneys among the 46 honorees.

Read Knowles's Trailblazers profile here.

Read Ingis's Trailblazers profile here.

Analysis:

FDA Makes Final Determination on Partially Hydrogenated Oils

Last week, the U.S. Food and Drug Administration (FDA) finalized its 2013 tentative determination that partially hydrogenated oils (PHOs) are not generally recognized as safe (GRAS) for use in human food. In a recent client alert Venable attorneys **Angel A. Garganta**, **Michelle C. Jackson**, **Matthew M. Gurvitz**, and **Matthew S. Poliner** write that the decision basically means food manufacturers have three years to remove PHOs, which are the primary dietary source of artificial trans fats in processed foods, from their human food products.

The authors write that it is important that not only food manufacturers, but also distributors and others in the industry, be aware of the ingredients in their products. If PHOs are used, they must be removed within three years. Additionally, labels must be modified and product inventories must be depleted for affected products before June 18, 2018.

Read the client alert to **learn more about the FDA's decision to revoke the GRAS status of PHOs**.

Read a recent post to Venable's advertising law blog to **learn how the FDA's decision could affect PHO-related class action lawsuits**.

You've Got to Fight for Your Right to License

Last week, the seemingly endless battle in the lengthy *Beastie Boys v. Monster Energy Company* litigation provided another reminder of how important it is for marketers and agencies to clear third-party IP rights for works used in advertising materials, writes Venable attorney **Linda J. Zirkelbach** in a recent post to the firm's advertising law blog.

On top of the $1.7 million in damages previously awarded to the group because Monster Energy ran a promotional video on its website that used portions of five Beastie Boys songs as the soundtrack and included other references to the group, which has been vocal in its refusal to license its works for use in advertising, a New York federal court ordered Monster Energy to pay the Beastie Boys' parties $667,849.14 in attorney's fees.

In addition to providing a cautionary tale about the dangers of using unlicensed works in advertising materials, Zirkelbach writes, the decision also provides potential strategies for mitigating the size of legal

2015

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fee awards in such litigation.

Read the full post to **learn more about the case and what factors led the judge to limit the amount of legal fees awarded**. You can **read the judge's legal fees decision here**.

Read an earlier blog post about the damages award in ***Beastie Boys v. Monster Energy Company***.

FCC Opens TCPA Pandora's Box Wider

For more than a year, telemarketers have anxiously awaited clarity on a number of issues relating to the Telephone Consumer Protection Act (TCPA), a statute that Federal Communications Commission (FCC) Commissioner Pai has called "the poster child for lawsuit abuse." If telemarketers hoped the FCC's June 18 Open Meeting would bring any relief, write Venable attorneys **Daniel S. Blynn** and **Mark S. Goodrich** and summer associate Allison L. Laubach* in a recent post to the firm's advertising law blog, those hopes were in vain.

Instead the majority of FCC Commissioners followed the lead of a fact sheet circulated by FCC Chairman Tom Wheeler last month and adopted a broad interpretation of "capacity," emphasizing that the definition of "autodialer" includes the future or "potential" capacity to dial random or sequential numbers.

This problem with this definition, the authors write, is that the FCC's new guidance considers any technology with the capacity, present or future, to dial random or sequential numbers an autodialer. This is bad news for telemarketers because, with the exception of an old-fashioned rotary phone, almost any piece of phone equipment can be programmed to record and redial telephone numbers. This expansive definition of "autodialer" will likely maintain telemarketers' status as prime targets for class action litigation.

Read the full blog post to learn more about the implications of the FCC's recent decisions on TCPA litigation and telemarketing operations.

Read the FCC's announcement of the decision here.

Take a Strategic Approach to Managing CFPB Regulatory Risk

On June 17, Venable partner **Jonathan L. Pompan** joined Christopher Sicuranza, the Managing Director and U.S. Banking Lead for Navigant Consulting, for a discussion of the strategies companies subject to the Consumer Financial Protection Bureau's (CFPB) ever-changing supervisory authority and regulatory expectations can use to mitigate regulatory risk.

View the presentation slides and listen to a recording of the discussion to learn more.

*Allison L. Laubach is a Venable summer associate and has not been admitted to practice law.

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