

**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

In This Issue:

Jeffrey D. Knowles
jdknowles@Venable.com
 202.344.4860

Gregory J. Sater
gjsater@Venable.com
 310.229.0377

Daniel S. Silverman
dssilverman@Venable.com
 310.229.0373

Ellen T. Berge
etberge@Venable.com
 202.344.4704

Andrew E. Bigart
aebigart@Venable.com
 202.344.4323

Mikhia E. Hawkins
mhawkins@Venable.com
 202.344.4573

Honors and Awards

2011 *Chambers USA*
 Award for Excellence
 Winner



Law Firm of the Year,
 National
 Advertising, *U.S. News*
 and *World Report*, 2011

News**FDA, FTC Send Joint Warning Letters to HCG Marketers**

On December 6, the Federal Trade Commission (FTC) and the Food and Drug Administration (FDA) announced that the agencies issued joint warning letters to seven marketers of human chorionic gonadotropin (HCG) weight-loss products. HCG is a hormone produced in women during pregnancy. FDA approved HCG as an injectable prescription drug for the treatment of certain cases of female infertility, testicular abnormalities, and other medical conditions, but it is not FDA-approved as a weight loss drug.

The warning letters cover HCG weight-loss products marketed as over-the-counter products and identified as "homeopathic." The marketers typically direct users to follow a severely restrictive diet while using the product. The warning letters state that the marketers' weight-reduction claims violate the Federal Trade Commission Act and render the products misbranded, unapproved new drugs in violation of the federal Food, Drug, and Cosmetic Act. The FDA also issued an alert warning consumers about HCG products advertised as weight-loss solutions.

HCG weight-loss marketing was also the subject of settlements the Texas Attorney General reached last month with several weight-reduction clinics and a distributor of a HCG product. On October 27, 2011, the Texas Attorney General's office announced the settlements, which prohibit the clinics and HCG product distributor from advertising HCG products for weight loss.

[Go here](#) to read the FDA's HCG Consumer Update.

[Go here](#) to view the joint warning letters and additional information the FDA has published about HCG.

[Go here](#) to read the Texas AG's press release.

FTC Issues Final Business Opportunity Guidelines

On November 22, 2011, the FTC issued the long-awaited *Disclosure Requirements and Prohibitions Concerning Business Opportunities*. The Final Rule, which is the product of a five-year rulemaking process, outlines what the FTC considers a "business opportunity," what disclosures are required when marketing a business opportunity, and what acts are specifically prohibited when marketing a business opportunity. The Final Rule goes into effect on March 1, 2012.

Under the Final Rule, a "business opportunity" is any commercial arrangement in which:

- a seller solicits a prospective purchaser to enter a new business;
- the prospective purchaser is required to make a payment; and
- the seller represents that it will provide the purchase with locations, outlets, accounts, or customers as part of the business, or will buy back any or all of the goods or services that the purchaser makes.

The Final Rule requires a business opportunity seller to provide a prospective purchaser with a single written disclosure document that identifies the seller and provides information on any earnings claims, refund policies, and civil or criminal actions involving the business opportunity seller. Where applicable, the Final Rule requires the disclosure of detailed supplementary information on these topics.

The Final Rule prohibits business opportunity sellers from making various types of misrepresentations regarding earnings claims, the cost of the business opportunity, the nature of any promised assistance, and endorsements, among others. It also prohibits business opportunity sellers from failing to make promised refunds, and from assigning to any purchaser a purported exclusive territory that has been sold to another purchaser.

[Go here](#) to read a post on the FTC's Business Center Blog explaining the Final Rule.

[Go here](#) to read the text of the Final Rule.



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Analysis

Nutella Case Another Example of California's Tough Class Action Laws

Most marketers know that California has become a battleground for consumer class actions that allege false advertising. Venable partner [Gregory J. Sater](#) examines how changes to California law following a 2009 decision called Tobacco II, have left marketers with fewer avenues to successfully oppose class certification in false advertising suits.

[Go here](#) to read Sater's piece published in the latest issue of the *DRMA Voice*.

Let the Seller Beware

Aggressive federal and state regulatory enforcement, competitors increasingly willing to mount self-regulatory and/or Lanham Act challenges and an uptick in advertising-related consumer class actions has created the most challenging legal environment for markets in decades. Venable partners [Jeffrey D. Knowles](#) and [Daniel S. Silverman](#) examine the ins and outs of each of these potential threats to marketers in the December issue of *Electronic Retailer* magazine.

[Go here](#) to read their piece, which begins on page 40.

Upcoming Events

Affiliate Summit West – Las Vegas

January 9, 2012

Visit Venable during the Meeting Market at Affiliate Summit West, and join us for a presentation by [Thomas A. Cohn](#) on Affiliates Under Fire: Next Steps and Best Practices.

ACI's Advertising Law Conference – New York

January 23-24, 2012

Venable is a proud sponsor of this conference, join us for a presentation by [Roger A. Colaizzi](#) on Battle of the Brands: Resolving Disputes Involving Competitor's Comparative Claims.

ACI's Consumer Finance Class Actions & Litigation – New York

January 26-27, 2012

Venable is a proud sponsor of this conference, join us for a presentation by [Thomas E. Gilbertsen](#) on Dodd-Frank & the CFPB: A Look into Today's Most Important Issues, the Status of the Bureau and Which Regulations Will Most Impact Consumer Finance Institutions & Litigators in the Next Year.

PLI's Green Technology Law and Business 2012 Conference – New York (webinar)

February 24, 2012

[Thomas A. Cohn](#) will discuss the FTC's Revised Green Guides & FTC Enforcement.

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