



December 13, 2012

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

David G. Adams
dgadams@Venable.com
202.344.8014

Emilio W. Civitanes
ecivitanes@Venable.com
202.344.4414

Todd A. Harrison
taharrison@Venable.com
202.344.4724

Stuart P. Ingis
singis@Venable.com
202.344.4613

Claudia A. Lewis
calewis@Venable.com
202.344.4359

Amy Ralph Mudge
amudge@Venable.com
202.344.4743

Andrew D. Price
adprice@Venable.com
202.344.8156

Special Announcement:**We'll See You in the New Year!**

Venable's Advertising News and Analysis will take a couple of weeks off over the holidays and return to your inbox on January 3.

We hope that your holiday season is happy, healthy and full of friends and family. Thank you for helping make 2012 a great year for the Venable team, and we look forward to seeing you all in 2013.

Analysis**It's Easier Being Green**

In the December 2012 edition of *Electronic Retailer* magazine, Venable partners **Jeffrey D. Knowles**, **Amy Ralph Mudge** and **Randal M. Shaheen** review the Federal Trade Commission's (FTC) revised *Green Guides*, which were released in October. Although the *Guides* are not laws or rules, they are strong indicators of how the FTC will interpret the rules and laws it is charged with enforcing. And, the trio write, if the past is any indication, the release of the *Guides* will be followed by an uptick of enforcement actions related to "green" claims.

[Click here](#) to read the *Electronic Retailer* column and learn what the *Guides* say about "biodegradable," "free of" and "recyclable" marketing claims.

Off-Label Marketing Protected by First Amendment

On December 3, the United States Court of Appeals for the Second Circuit ruled in *U.S. v. Caronia* that "the government cannot prosecute pharmaceutical manufacturers and their representatives under the FDCA (Food, Drug and Cosmetic Act) for speech promoting the lawful, off-label use of an FDA (Food and Drug Administration)-approved drug." In a recent white paper, Venable attorneys **David G. Adams**, **Todd A. Harrison**, **Claudia A. Lewis**, **Ralph S. Tyler** and **Matthew R. Rabinowitz** write that although last week's decision only binds the states within the Court's jurisdiction, it potentially has far-reaching effects on future FDA litigation strategies and False Claims Act prosecutions.

[Click here](#) to read the white paper and learn what the decision means for pharmaceutical, medical device, biotech, food and dietary supplement and other companies who market and promote FDA-regulated products.

Understanding New Restrictions on Advertising GI Bill Benefits

Earlier this month, the Department of Veterans Affairs (VA) announced it had registered the term "GI Bill" as a trademark with the U.S. Patent and Trademark Office. In a recent article, Venable attorneys **Jonathan L. Pompan** and **Andrew D. Price** write that advertisers of education opportunities to servicemembers and veterans should consider this important development when planning marketing campaigns.

Randal M. Shaheen
rshaheen@Venable.com
202.344.4488

Ralph S. Tyler
rtyler@Venable.com
410.244.7436

Jonathan L. Pompan
jlpompan@Venable.com
202.344.4383

Matthew R. Rabinowitz
mrrabinowitz@Venable.com
202.344.4228

Honors and Awards

Top ranked in *Chambers USA*
2012



Law Firm of the Year, National
Advertising, *U.S. News and World
Report*, 2011-2012



Top-Tier Firm *Legal 500*



For more information about
Venable's award-winning
Advertising and Marketing
practice, please visit our
website at
[www.Venable.com/Advertising-
and-Marketing](http://www.Venable.com/Advertising-and-Marketing)

The trademarking of the term is intended to help protect servicemembers and veterans from deceptive advertising. However, it is not clear, write Pompan and Price, how the VA may choose to assert its rights against third parties that use the term (or receive GI Bill funding). In addition, the Venable attorneys point out four potential weaknesses that may hamper the VA's efforts to enforce the mark.

[Click here](#) to read the full text of the article by Pompan and Price and learn the four reasons it may be difficult for the VA to enforce the mark and what marketers should expect next.

FTC Looks at "The Big Picture"

On December 6, the FTC held a daylong public workshop to examine the practices and privacy implications of "comprehensive" data collection about consumers' online activities. Although data collection capabilities of entities such as operating systems were discussed, many speakers also focused on data collection for advertising purposes, write Venable attorneys [Emilio W. Cividanes](#), [Stuart P. Ingis](#) and [Julia Kernochan Tama](#) in a post to Venable's advertising law blog, www.allaboutadvertisinglaw.com.

[Click here](#) to read the post and learn what thoughts FTC Commissioners Brill and Ohlhausen shared about the regulation of online data collection.

Upcoming Events

[Affiliate Summit West 2013 - Las Vegas](#)

January 13-15, 2013

Join Venable attorneys at this conference which provides educational sessions on the latest affiliate-marketing industry issues and fosters a productive networking environment for affiliate marketers.

To register, please [click here](#).

[Electronic Retailing Association Network LA: Beach Access - Santa Monica, CA](#)

January 16, 2013

Venable is a proud sponsor of this event. Please join us and direct-to-consumer marketing leaders for an evening of connections and cocktails.

For more information, please [click here](#).

[State of the Net Conference - Washington, DC](#)

January 22-23, 2013

Venable is sponsoring this conference, which is the largest information technology policy conference in the U.S. and the only one with over 50 percent Congressional staff and government policymakers in attendance. Join the attorneys of Venable's [Privacy and Data Security Group](#) at this important event.

[Click here](#) to learn more.

[Electronic Retailing Association Great Ideas Summit - Miami](#)

February 25-27, 2013

Venable is proud to sponsor the ERA Great Ideas Summit 2013's VIP Reception. Please join Venable partner [Jeffrey D. Knowles](#) as he presents the educational session "Up, Down and Sideways - How Enforcement Actions Traverse the Value Chain" on Tuesday, February 26. Meet the attorneys of [Venable's Advertising and Marketing Group](#) on the show floor at booth #304.

[Click here](#) to learn more about ERA GIS 2013.

[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.

© 2012 Venable LLP. This alert is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address. ATTORNEY ADVERTISING.

575 7th Street, NW, Washington, DC 20004

© 2012 Venable LLP | www.Venable.com | 1.888.VENABLE