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Honors and Awards

2011 *Chambers USA*
Award for Excellence
Winner



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



Top -Tier Firm, *Legal*
500

News**Venable's Advertising Practice Named "Law Firm of the Year"**

On November 1, Venable's Advertising, Marketing and New Media Practice Group received the Tier 1 national ranking and the inaugural advertising "Law Firm of the Year" award from U.S. News Media Group and Best Lawyers. The "Law Firm of the Year" award is given to one firm in each of the 75 national practice areas ranked by U.S. News and Best Lawyers after exhaustive research, including collection of client and lawyer evaluations, attorney peer review, and review of additional information provided by law firms during the submission process.

The "Law Firm of the Year" honor complements other top honors received by Venable's Advertising practice, including back-to-back *Chambers USA* Awards for Excellence (Advertising category) and a Top-Tier ranking in the Marketing and Advertising category of *Legal 500*.

In addition to Venable's advertising honors, the firm received national Tier-One rankings in Criminal Defense: White-Collar – Governmental Investigations, Litigation – Environmental, Litigation – Real Estate, Litigation – Regulatory Enforcement, Mass Tort Litigation / Class Actions – Defendants, Technology Law and Trademark Law.

[Go here](#) to view all of Venable's U.S. News / Best Lawyers rankings.

"Company Doe" Lawsuit Challenges CPSC Database

In mid-October, a company identified only as a "a maker and seller of consumer products" filed suit in a Maryland court to block the Consumer Products Safety Commission from posting what the company called "baseless allegations" to www.saferproducts.gov, a database launched in March that allows consumers to post and read reports about any products regulated by the Commission. The CPSC told the *Washington Post* it plans to file a motion to have the case unsealed.

Critics of the database maintain that inaccurate information on the site can mislead consumers and unfairly threatens a company's operations, possibly triggering event-reporting requirements for other government regulators. However, consumer advocates believe the database speeds up the identification and mitigation of hazardous products.

When it receives a complaint, CPSC shares the complaint with the company, which has 10 days to respond and identify any materially inaccurate information. Any inaccurate information identified by the company is removed from the comment before it is made public and the company is allowed to post comments alongside the complaint.

According to the *Washington Post* story, CPSC has received, as of September, 383 material inaccuracy claims from companies. More than 200 of the claims involved a consumer naming the wrong company. A recent GAO study found that CPSC "has generally been able to identify products and resolve inaccuracy claims," but could do more to collect model or serial numbers of the products at issue.

[Go here](#) to read the *Washington Post's* coverage of the suit.

[Go here](#) to read a Venable white paper about the CPSC database.

[Go here](#) to read the GAO report.

Senate Unveils Bill to Revitalize USPS, Stave off Five-Day Delivery

On November 2, a bill titled the "21st Century Postal Service Act of 2011," was introduced into the U.S. Senate. The bill would make significant changes to the U.S. Postal Service's operations with the goal of keeping the postal service economically viable while staving off the implementation of five-day-a-week mail delivery for at least two years.

Senators Joseph I. Lieberman (I-CT.), Susan Collins (R-ME), Thomas Carper (D-DE) and Scott Brown (R-



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MA) announced the specifics of the bill.

The bill would prohibit USPS from eliminating Saturday delivery for at least two years, and block future elimination of Saturday delivery unless

- USPS identifies disproportionately affected consumers and develops remedies;
- USPS makes full use of its current and future legal authority to increase revenue and reduce costs; and
- A GAO review of USPS' financial situation finds that the implementation of five-day delivery is financially necessary. In addition, the Postal Regulatory Commission (PRC) must find that the Comptroller General has made a determination that moving to five-day delivery is financially necessary.

The Bill would also authorize USPS to introduce new products and services so long as they utilize existing infrastructure, are consistent with the public interest, do not create unfair competition and have the potential to improve USPS' financial condition.

The bill would authorize USPS, where feasible, to transition delivery to curbside, sidewalk or centralized mailboxes no later than 2015. It is estimated that this change could save billions of dollars each year.

Other portions of the bill deal with measures designed to return USPS to financial stability.

[Go here](#) to view the full text of the bill and other related documents.

[Go here](#) to read coverage of the bill from *Multichannel Merchant*.

Santa Monica, CA Files Criminal Charges Against Goldline International in Bait-and-Switch Case

Tuesday, attorneys with the city of Santa Monica, California's Consumer Protection Unit announced that they had filed a 19-count criminal complaint against Goldline International, one of the nation's largest precious metals dealers, for allegedly using politically conservative celebrities to drive a "bait-and-switch" operation designed to sell overpriced gold coins. Each of the charges, which include grand theft by false pretense, false advertising, conspiracy and elder abuse, are misdemeanors.

According to the *Santa Monica Daily Press*, the charges are the result of a joint investigation launched in July 2010, by the City Attorney's Office and the Los Angeles County DA's office after consumers complained they were lied to and misled in entering into purchases of gold coins. Others said they received something different from what they ordered.

City officials allege that salespeople were trained to "get the money in" from customers with the promise of delivering gold bullion, although the company intended to later switch the purchase to overpriced gold coins. They also allege that the company offered gold bullion for sale, via television and its website, bullion it did not intend to deliver, and instructed salespeople to withhold certain pricing information from customers and note incentivized salespeople to push the sale of the coins instead of bullion.

[Go here](#) to read the *Santa Monica Daily Press*' coverage.

Federal Court Tosses Facebook "Friend-Finder" Class Action

Last week, a federal district court dismissed a putative class action against Facebook alleging that the social networking site misappropriated the plaintiffs' names and likenesses to promote Facebook's Friend Finder feature. The plaintiffs argued that Facebook violated state and common law by placing notifications on users' home pages stating that certain friends have used Friend Finder, which searches a user's email accounts to identify persons who are not yet Facebook friends with the user. The California federal court granted Facebook's motion to dismiss the lawsuit, holding that the plaintiffs had failed to demonstrate any injury from the social media behemoth's use of their names and pictures to promote the Friend Finder application.

In finding that the plaintiffs had failed to allege any cognizable economic or other harm, the court noted that Facebook merely displayed the plaintiffs' names and pictures on the home pages of other users with whom the plaintiffs were already Facebook friends, not in any context in which the names and likenesses did not already appear.

[Go here](#) to read the court's order to dismiss.

[Go here](#) to read the original complaint.

Veterans' Charity, Telemarketer Resolve Oregon AG Charges

Last week, the Oregon Department of Justice announced an agreement that will resolve allegations of misconduct by a veteran's charity and its for-profit telemarketing partner. Under the agreement, the charity must follow procedures to ensure donations are spent for charitable purposes and the telemarketer has agreed to stop soliciting residents of the state.

The agreement that was announced is the result of a 2010 lawsuit against alleging violations of Oregon's no-call law and misleading donors about how contributions would be spent. The charity allegedly told donors that contributions would help veterans who were homeless or had medical needs while the telemarketer received 80 percent of the donations and the balance was used to pay travel expenses for the charity's directors.

In addition to instituting measures that ensure donations are spent for charitable purposes, the charity must also

- Obtain proposals from at least three different firms before contracting with a telemarketer;
- Restrict any telemarketer from using the organization's donor information for commercial purposes;
- Have all scripts and written materials provided to donors reviewed by the entire Board, which will not approve solicitations that are misleading or fail to describe the primary ways in which donations will be used; and
- Adopt an annual budget and closely monitor travel requests and expenses.

In May, the telemarketer resolved allegations relating to the lawsuit by paying \$40,000 and agreeing not to solicit donations in Oregon on behalf of a nonprofit until 2014. After that date, the telemarketer must file documents with the AG's office demonstrating that it will comply with all applicable laws. It is also prohibited from making false or misleading statements about how donations will be used and must disclose that it is a professional fundraiser.

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

Analysis

The Legal Perils, Pitfalls and Puffery of Advertising Body Shaping Benefits

Marketers who advertise a product that promises body transforming benefits such as body shaping, weight loss or toning are popular targets for litigation and regulatory enforcement. Venable Partner Greg Sater examines two recent cases involving body transformation claims and the lessons marketers can draw from them in the November issue of *Electronic Retailer*.

[Go here](#) to read Sater's column, which appears on page 42 of the magazine.

Upcoming Events

Council for Resource Development Annual Conference - Washington, DC

November 11, 2011

[Melissa Landau Steinman](#) will be speaking about social media risk management.

"Tracking and Targeting Customers and Prospects Online and in Social Media 2011" for the Practising Law Institute - San Francisco

November 15, 2011

[Stuart P. Ingis](#) will be presenting a session on Self-Regulation.

33rd Annual PMA Marketing Law Conference - Chicago

November 15-16, 2011

[Thomas A. Cohn](#), [Claudia A. Lewis](#), [Roger A. Colaizzi](#) and [Melissa Landau Steinman](#) will present sessions at the conference. We are pleased to offer Venable clients and friends a special discount on registration at the Promotion Marketing Association's Annual Meeting. Please use the code: vnb1lawguest2011 when registering to receive \$100 off. [Go here](#) for more information and to register.

Toy and Game Inventor Conference – Chicago

November 17-18, 2011

[Michael Sartori](#) will be speaking on "Protecting Your Idea: Trademarks, Copyrights & Patents."

"Avoiding Internet Advertising and Recruitment Pitfalls" webinar for APSCU

November 17, 2011

Jonathan L. Pompan and **Alexandra Megaris** will be speaking on the Misrepresentation Rule issued by the Department of Education, with a focus on the implications for Internet advertising and recruitment and the new guidance issued by APSCU.

ACI Advanced Summit on Defending Food & Beverage Consumer Fraud Litigation – Chicago

December 1, 2011

Claudia A. Lewis will be speaking on Minimizing the Ripple Effect of FDA and FTC Enforcement Actions.

Affiliate Summit West – Las Vegas

January 9, 2012

Thomas A. Cohn will be speaking about Affiliates Under Fire: Next Steps and Best Practices.

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