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Behavioral Targeting Firm Faces Privacy Lawsuit

Adzilla, the behavioral targeting company that shut down last year in the wake of a congressional hearing, is now facing a class-action lawsuit for allegedly violating the privacy of online users by tracking their activity.

In a complaint filed in federal court in the Northern District of California, Virginia resident Susan Simon stated she initially became aware of Adzilla's activities in June 2007, when she realized her ISP was assigning new IP addresses to her. Upon investigation, Simon discovered that the new addresses were owned by Adzilla, which was tracking her online activity. "An outside entity, one with which plaintiff was entirely unfamiliar, was accessing and searching plaintiff's web log activities," the complaint states. Simon alleges that she was not notified about the tracking and did not consent to it, although she does not allege that Adzilla sent her any ads.

The complaint alleges that Adzilla, Internet service provider Continental Visinet Broadband, and others acted in concert to violate the federal wiretap law and other laws.

Like its competitor NebuAd, Adzilla planned to buy data from ISPs on subscribers' online activities and then use that information to send the subscribers targeted ads. NebuAd beta-tested its business model with six companies, but stopped operations after



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UPCOMING EVENTS

April 2-3, 2009

PLI's Information Technology Law Institute 2009: Web 2.0 and the Future of Mobile Computing: Privacy, Blogs, Data Breaches, Advertising, and Portable Information Systems

Topic:

"Mobile Advertising and Web 2.0"

Speaker: [Linda Goldstein](#)

PLI California Center
San Francisco, CA

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lawmakers complained that consumers had not expressly consented to be tracked in this manner.

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It is not known whether Adzilla actually tested its model in the United States, but complaints that the company was tracking people began appearing on BroadbandReports.com in the summer of 2007.

April 22-23, 2009

Food and Drug Law Institute 52d Annual Conference

Topic:

"Food Advertising: Campaigns and Claims"

Speaker: [Christopher A. Cole](#)

NebuAd and six Internet service providers are also defending against a privacy lawsuit brought by the same law firms that sued Adzilla. The ISPs in that case argue the complaint against them should be dismissed because they were simply passive participants.

L'Enfant Plaza Hotel

Washington, DC

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FTC Tells Web Sites to Remove Stimulus Scam Ads

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The Federal Trade Commission (FTC) is warning online publishers and ad networks that it is launching a campaign against misleading ads and e-mails touting access to economic stimulus-related grants, and it expects media outfits enabling those ads to help the agency in its efforts.

April 29, 2009

American Advertising Federation Webinar

Topic:

"Budget Busters: Bongs, Blogs, and Brand Wars."

Speaker: [Jeff Edelstein](#)

The FTC is asking "online media companies to monitor their sites for scam ads and get rid of them," Eileen Harrington, acting director of the FTC's Bureau of Consumer Protection, announced at a press conference. While acknowledging that online ad networks and third-party marketing firms "play a pivotal role" in enabling those ads, Harrington said, "The buck stops with the publisher."

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According to the agency, Facebook has already agreed to ban such ads, and Google is working with the FTC to weed out stimulus scam ads that violate company policies. As for other Web publishers, Harrington said, "They will be hearing from us. I would hope this would be a showcase opportunity for online media companies to [screen ads]."

June 4-6, 2009

American Advertising Federation National Conference 2009

Speaker: [Jeff Edelstein](#)

Many of the scams are plugged through display ads with photos of President Obama, or sites featuring Obama's campaign logo, or logos of popular new sites. The Web sites generally require consumers to provide credit card information to cover a small fee for a CD or access to a list of available government grants, which is actually free information already provided by the government. If consumers fail to cancel their membership, they are charged a much bigger amount of about \$100 and added monthly fees.

Crystal Gateway Marriott

Arlington, VA

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In some cases, it may be difficult for publishers and ad vendors to ban such ads. Many ads take users to domains that differ from the ones featured in the ad copy, and transfer from one domain to another. It can also be tricky to pinpoint the entities behind the ads or Web sites.

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Fake Chuck Westfall Blog Irks Real Canon

Fake blogs parodying celebrities, politicians, and corporate executives are all over the Internet (check out, for instance, <http://www.newsgroper.com/> and the now shuttered <http://fakesteve.blogspot.com/>). Most of the time, these parodies are ignored by their targets. A Fake Chuck Westfall site that cropped up in September, however, irritated its target enough that he took action.

Chuck Westfall is the "camera evangelist" for Canon USA, answering reader questions at the Digital Journalist and the Photography Blog. The anonymous author behind Fake Chuck Westfall writes a satirical blog making fun of Westfall and criticizing Canon products.

In a February 13 letter, Canon sent WordPress.com, the host of the Fake Westfall blog, a notice demanding that it take down the blog and provide Canon with the name and contact information of its author. In turn, according to the Fake Westfall site, WordPress sent its author an e-mail attaching the complaint and ordering him/her to "remove the Canon logo and any mention of Chuck Westfall's family and threats of violence from your blog" within 48 hours.

The notice from Canon made four claims against the author of Fake Westfall, who responded by deleting the Canon logo and explicit threats of violence from the site. Now, for instance, the author's idea for getting people's attention by "bashing their heads with a two by four" has become a threat to "start dancing ballet in front of them."

The author refused to comply with Canon's two other requests. Canon argued that Fake Westfall invaded the real Westfall's family's right to privacy by writing about "his" wife and daughter, but as the author alleged, the real Westfall had also done so on several occasions.

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The author also declined to alter "the overall look, feel and tone of the blog," despite Canon's contention that it "is calculated to mislead recipients as to the source of the material contained therein." He/she wrote, "I thought it was pretty clear that this blog is satire. There's a FAKE included in the URL, there's a huge FAKE on top of the blog. 98% of people posting here know this is a fake blog."

Of course, any trademark owner must vigorously protect its mark from misuse and appropriation by others. Apparently, the author's changes—despite his/her refusal to comply with all of Canon's requests—satisfied WordPress, which did not disable the site as it had threatened. For now, the Fake Westfall blog—sans Canon trademark—lives on.

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Ex-FTC Chair Urges Advertisers to Push Self-Regulation

Deborah Platt Majoras, former chairwoman of the Federal Trade Commission and now general counsel of Procter & Gamble, is urging the ad industry to fight for self-regulation.

Majoras, the keynote speaker at a recent conference of the Association of National Advertisers, said the ad industry has to underscore to lawmakers, regulators, and the public that it has been responsible and does not require additional oversight.

Majoras, who served as FTC chairwoman from 2004 to 2008, said that market failures have lead "to a more skeptical outlook from policymakers about self-regulation," but, she added, "The industry has been far more responsible than we get credit for. It's time that we backed up rhetoric with facts."

Ms. Majoras expressed confidence that the FTC, which is now chaired by Jon Leibowitz, is prepared to give self-regulation a chance. She said that advertisers should not wait passively for regulatory mandates, but take the initiative to be more responsible.

She urged advertisers to make only substantiated claims and to protect consumer privacy. Advertisers should also be thinking about making disclosures about their marketing practices, whether or not the FTC requires them, Majoras said.

Majoras singled out online advertising for a point about fostering

consumer trust. She said the online space is one in which advertisers must be especially careful and transparent, because consumers feel a unique sense of ownership over the Internet.

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U.K. Bans Product Placement on TV

In a surprise move, U.K. Culture Secretary Andy Burnham has blocked the introduction of product placement in the U.K.

The ban, which is scheduled to remain in place for at least two years, came after a lengthy consultation period as part of the E.U. Audiovisual Media Services Directive permitting individual governments to adopt their own rules on product placement.

In a statement, Burnham said he had "very serious concerns about blurring the boundaries between advertising and editorial content," adding that the economic benefits of product placement were not clear.

"I have listened carefully to the arguments on both sides around product placement and concluded that it should not be permitted in programs made for this country," Burnham said. "I am well aware that a number of commercial broadcasters are facing difficult economic times and I will continue to work with the industry to explore ways we can support them, but my preference is to consider all other avenues before allowing product placement."

The E.U. loosened the product placement rules last year, giving each member country the authority to set its own regulations. Viviane Reding, who spearheaded the Directive, said on BBC Radio that she was "very much astonished that the U.K. government seeks to oppose a form of funding that would support its television industry," and said the move "really does punish U.K. production companies."

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