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Godzilla Breathes Fire Over Comcast Ad Campaign

The Japanese movie studio that owns the rights to Godzilla is suing ad agency Goodby Silverstein and cable company Comcast over an ad campaign earlier this year that the studio claims illegally featured the fire-breathing monster lizard.

The complaint, filed August 6 in federal district court in Los Angeles by Tokyo-based Toho, argues that the ad campaign dubbed "Comcast Town" used Toho's trademarked Godzilla character without permission or payment of licensing fees.

The series of national TV spots launched in March centered around a monstrous, dinosaur-like creature. In one spot, the monster was shown battling a robot, and another featured a model toy of the creature.

"Altogether, the Godzilla character appears on the screen for approximately half the commercial," the complaint states. Toho is seeking compensation and injunctive relief preventing the agency and marketer from "exploiting its valuable character in the future."

In its complaint, Toho alleges that, as soon as it learned of the ad campaign in March, it wrote a cease-and-desist letter to Comcast demanding that the company shut it down. "When defendants finally responded, they denied that the campaign featured the Godzilla character but nevertheless promised that the commercial would stop airing on television and on the website after April 11, 2009." Toho claims that the ad remained on the air "at least until



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September 13, 2009
ERA D2C Convention
Topic: The B2C Claim Game;
Health and Beauty Edition

May 2009.”

Toho created Godzilla in the early 1950s, and released its first movie featuring the iconic character, *Godzilla: King of the Monsters* in the U.S. in 1956. Godzilla is often said to be a symbol of the atomic bomb; others argue that Godzilla represents the United States (which dropped two atomic bombs on Japan). Since the first movie, the company has produced some 27 sequels. It obtained trademark registrations for the name and image in the U.S. in 1981.

Why it matters: The dispute centers around whether the character in the Comcast commercial infringes on the Godzilla trademark. The standard for trademark infringement is “likelihood of consumer confusion.” In other words, will consumers think the monster depicted in the ads is Godzilla? Toho says yes. Comcast says no.

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RealNetworks Barred From Selling DVD Copy Software

In a widely anticipated decision, on August 11, a San Francisco federal district court granted the Hollywood movie studios a preliminary injunction barring RealNetworks from selling its RealDVD copying software or licensing it to set-top box manufacturers.

The court found that RealNetworks violated the Digital Millennium Copyright Act (DMCA) and its contract with the DVD Copy Control Association in developing DVD copying software. It did not address the central issue of whether consumers have the right to make backup copies of their DVDs, but focused instead on RealNetworks’ right to sell the software allowing them to do so.

In a related case that is still pending, RealNetworks has sued the studios on antitrust grounds. RealNetworks released the following statement in reaction to the decision: “We are disappointed that a preliminary injunction has been placed on the sale of RealDVD. We have just received the Judge’s detailed ruling and are reviewing it. After we have done so fully, we’ll determine our course of action and will have more to say at that time.”

Why it matters: The DMCA criminalizes production and dissemination of technology, devices, or services intended to circumvent measures that control access to copyrighted works. However, RealNetworks argues that it has the right to sell a product designed to allow consumers to make backup copies. Although RealNetworks has yet to announce whether it will appeal the district court’s ruling to the Ninth Circuit, most observers expect that it will.

Speaker: [Ivan Wasseman](#)
Paris Hotel
Las Vegas, NV
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September 14, 2009
WESTDOC- The West Coast
Documentary and Reality
Conference
Session: Branding and
Integration: The New Reality
Panelists: [Jordan Yospe](#) of
Manatt, Phelps & Phillips, Chris
Coelen of RDF Media Group
and Mark Koops of Reveille.
Doubletree Guest Suites Santa
Monica
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From The Source: AAF's Web
Seminar Series
Topic: "Budget Busters: Bongs,
Blogs and Brand Wars"
Speaker: [Jeff Edelstein](#)
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October 5-6, 2009
NAD Annual Conference 2009
Moderator: [Jeff Edelstein](#)
W Hotel
New York, NY
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October 27, 2009
American Conference Institute's
3rd Annual Forum
on Sweepstakes Contests and
Promotions
Speaker: [Linda Goldstein](#)
The Carlton Hotel
New York, NY
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November 5-6, 2009
31st Annual Promotion
Marketing Law Conference
Topic: "The Battle of the
Brands"
Moderator: [Chris Cole](#)
Fairmont Hotel
Chicago, IL
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November 5-6, 2009
31st Annual Promotion
Marketing Law Conference
Topic: "Sweepstakes &
Contests: Lend Me Your Ear

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Lawsuit Claims Site “Harvested” Email Addresses

Social networking site Tagged.com has been served with a class action complaint alleging that it tapped into the email address books of consumers and then spammed those addresses with misleading ads. The lawsuit names Miriam Slater and Sarah Golden as the plaintiffs.

“Tagged harvested millions of email addresses from the email address books of consumers,” states the complaint filed earlier this month in federal court in San Francisco. “Then, using these consumers’ email account credentials, Tagged sent unsolicited advertisements to the harvested email addresses, making the messages appear as if they were invitations to join Tagged sent by persons known to the recipients.” The complaint, which seeks class action status, charges Tagged with violating various laws, including the federal Stored Communications Act and Computer Fraud and Abuse Act.

The lawsuit follows an announcement by New York State Attorney General Andrew Cuomo that he plans to sue Tagged for false advertising, invasion of privacy, and engaging in a deceptive business practice.

The California case was brought by two named plaintiffs. The first alleges that she received a Tagged email on June 6 that purported to be from an acquaintance who wanted to share photos. She alleges that she visited the site and provided the company with information, but only because she wanted to view the pictures. Tagged never disclosed that she was actually registering to join the site or that it would harvest her email addresses and then solicit those contacts, Slater alleges. The second plaintiff alleges that she joined Tagged after receiving an invitation that appeared to have been sent by Slater.

The same plaintiffs firms that brought the case against Tagged.com also have separate cases pending against Facebook and ad companies NebuAd and Adzilla for invasion of privacy.

Why it matters: Tagged, which was founded in 2004, has been the subject of numerous customer complaints for sending deceptive bulk mail. A Time magazine article called Tagged “The World’s Most Annoying Website.” The site asks users for their email username and password, checks their email address books for contacts, and repeatedly sends email invitations to people who are not yet on Tagged, stating that they have been “added as a friend” or that the inviter has sent them photos on Tagged.

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and I'll Sing You a Song..."
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Chicago, IL
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Kellogg Finalizes Frosted Mini-Wheats Settlement

A court has issued an order banning the Kellogg Company from advertising that eating Frosted Mini-Wheats cereal is clinically proven to increase the attentiveness of children by any specific percentage.

The July 31 order further requires Kellogg to base any ads claiming that eating the cereal raises cognitive awareness in children on competent and reliable scientific evidence.

The order was issued in conjunction with a consent agreement reached between Kellogg and the Federal Trade Commission this past spring over an ad campaign that claimed that attentiveness improved by nearly 20 percent in children who ate the cereal, compared with those who skipped breakfast. According to the FTC, the study referenced by the ads found a benefit from eating Frosted Mini-Wheats in only half the children studied, and only 11 percent of the children's attention improved by 20 percent.

The FTC launched an investigation earlier this year, and announced the proposed consent agreement on April 20. Although the agreement bars Kellogg from making misleading claims for its breakfast and snack foods and from misrepresenting studies, it does not mean that the company admits to violating the law, the FTC said.

Why it matters: Food companies need to be especially careful these days, especially when it comes to claims aimed at children (or their parents). The FTC's action against a major food company sends a signal that it plans to step up enforcement and no one is exempt from its scrutiny.

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Advertisers Shun Fox's Glenn Beck

In what is turning out to be one of the more effective boycotts in recent years, a growing number of companies are pulling ads from the *Glenn Beck Program* on Fox News after the host called President Barack Obama a "racist" with a "deep-seated hatred for white people."

Thus far, a reported total of 20 companies have deserted the show in response to a boycott campaign by Color of Change. Among the advertisers to pull spots from the conservative talk show are Procter & Gamble, Sargento Cheese, Progressive Insurance, Allergan, Ally Bank, Broadview Security, Re-Bath, ConAgra, lawyers.com, Men's Warehouse, Radio Shack, and State Farm Insurance.

Beck, who made the remarks during a July 28 episode of *Fox and Friends*, draws an average of roughly 2 million viewers, making his show one of the

biggest on Fox News.

Ad time on cable is typically bought in bulk, and not for specific shows, which means that some of the targeted companies' ads may have ended up on the program without their knowledge and in violation of their own standards.

Color of Change is using a 600,000-member email list to urge people to sign a petition that is then forwarded to Beck's sponsors, as well as contacting advertisers directly. The group was founded after the Hurricane Katrina disaster to promote "racial progress," said James Rucker, its executive director, adding that this is the first time the group has led a boycott.

Fox News said through a spokeswoman that while some advertisers have "removed their spots from Beck," they have shifted to "other programs on the network, so there has been no revenue lost."

Why it matters: Some observers predict that Fox News will continue to air Beck's show, given its popularity and the conservative leanings of owner Rupert Murdoch. Others think Fox will pull the plug on the show if enough advertisers go away and stay away, which is the goal of Color of Change's boycott.

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