



December 18, 2009



## In This Issue

Due to an inadvertent error in yesterday's newsletter, we are resending it today. We apologize for the inconvenience.

- [Spammer Gets Slammer](#)
- [Google Threatens Ad Scammers With Lifetime Ban](#)
- [Ad Groups Challenge Tobacco Ad Law](#)
- [Wrigley Asked to Stop Eclipse Gum Ad Claims](#)

### Spammer Gets Slammer

**A self-proclaimed “Godfather of Spam” has been hit with a prison sentence of 51 months for his role in an e-mail penny stock scam.**

In addition to the four-year-plus sentence, Alan Ralsky, 64, will also have to forfeit \$250,000 seized by the government in 2007, and faces an additional five year probation.

A federal court in Detroit also sentenced three of Ralsky’s co-conspirators, including Ralsky’s son-in-law Scott Bradley, 48, who received 40 months in prison and five years of probation. In June, Ralsky and Bradley pleaded guilty to charges of conspiring to commit wire and mail fraud and violating the CAN-SPAM Act, which criminalizes certain unsolicited commercial e-mail messages sent using an unauthorized computer or with the intent to hide the e-mail’s original source, according to the office of the U.S. Attorney for the Eastern District of Michigan. The defendants were also charged with committing wire fraud and engaging in money laundering.

Ralsky has reportedly had a long and prolific career as a spammer. Before the CAN-SPAM Act was passed in 2003, Ralsky allegedly sent 70 million messages a day under phony names. In the operation for which Ralsky was prosecuted, starting in January 2004, his team sent billions of pieces of spam in a stock pump-and-dump scheme aimed at inflating the price of Chinese penny stocks and then reaping the profit, according to the prosecutor’s office. They took in close to \$3 million in the summer of 2005.



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According to the prosecution, Ralsky worked with How Wai John Hui, a resident of Hong Kong and Canada. Hui was sentenced to 51 months in prison, 3 years of probation, and \$500,000 in forfeitures. As CEO of China World Trade, Hui was the lead dealmaker representing companies whose stocks were being promoted in the scam. Hui pled guilty in December 2008. A fourth conspirator, John Bown, 45, of Fresno, California, was sentenced to 32 months in prison for his role in the scheme. He will face 3 years of probation and will forfeit \$120,000.

The government originally recommended that Ralsky receive up to 87 months in prison, but lowered the recommendation to 35- 43 months because of Ralsky's cooperation.

**Why it matters:** The harsh sentences imposed on Ralsky and his co-conspirators sends a message to other spammers perpetrating similar schemes, that courts may be losing patience with such scam artists. Unfortunately, the bigger challenge lies in identifying and tracking down Internet scammers, since they are frequently located across the globe and are typically skilled in covering their tracks.

[back to top](#)

## Google Threatens Ad Scammers With Lifetime Ban

**In a bid to protect its brand from scam artists and purveyors of malware, Google has announced that it will impose a lifelong ban on advertisers it determines are guilty of such schemes.**

Google started disabling the [AdWords](#) accounts of perpetrators this fall and is now intensifying its battle against fraudsters that continue to afflict the keyword search ad space. For instance, when a searcher types in the phrase "anti-malware software," a paid search ad that appears on the results page might link to a Web site that actually ends up downloading malware – software designed to infiltrate or damage a computer system without the owner's informed consent – onto the user's computer. Or a user might see a similar scam ad on a site that accepts Google text ads.

Until this new change in policy, Google relied on technology to keep ad scammers in check. About five years ago, the company started policing the landing pages of ads to identify pages that harmed computers and users. But the problem was that even when a scam was uncovered, it could take hours to disable it, by which point many of the ad scams had already done their damage. Google also found itself spending more and more resources in chasing fraudsters who repeatedly attempted to game the system.

In a fundamental shift in policy, now, when Google finds an ad that it deems dishonest or a scam, it immediately disables the account and any similar accounts it can link to the perpetrator. Nick Fox, business product director of AdWords, said the company has technology to determine who is connected to what account, which will make it difficult for a banned user to create another account. Users will receive an e-mail when their account is closed that allows them to argue their case to a group of staffers assigned to

### UPCOMING EVENTS

December 21, 2009  
National Constitution  
Conferences Webinar

Topic: "FTC Regulation of  
Advertising and Marketing"

Speaker: [Jeff Edelstein](#)

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January 7, 2010  
Thompson Interactive Audio  
Conference

Topic: "Dietary Supplement  
Enforcement 2010: What  
Pharma and Supplement  
Makers Must Prepare For"

Speaker: [Ivan Wasserman](#)

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6th Annual Film, TV & New  
Media Law Conference

Topic: "Brand Integration  
Deals"

Speaker: [Jordan Yospe](#)

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January 21-22, 2010  
6th Annual Film, TV & New  
Media Law Conference

Topic: "Trademark Rights for  
the Entertainment Lawyer:  
Use of Trademarks in Creative  
Works"

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January 26-27, 2010  
American Conference

handle appeals on a case-by-case basis.

“Initially we wanted to give these users the benefit of the doubt,” said Fox, adding that Google’s view was that maybe they had made a mistake. “What we’re seeing is that’s not really the case. When an advertiser creates one scam, it is likely they did it intentionally, and it’s also likely the next site they create is going to be a scam.”

**Why it matters:** The unprecedented move by Google signals how vulnerable online advertising is to scams and how technology offers only a partial solution to the problem. It’s one more sign that the freewheeling nature of the Internet is slowly being transformed into a more structured, rule-oriented medium.

[back to top](#)

## Ad Groups Challenge Tobacco Ad Law

**The Association of National Advertisers, the American Association of Advertising Agencies, and the American Advertising Federation have filed an [amicus brief](#) in a lawsuit brought by several major advertisers that contends that the Family Smoking Prevention and Tobacco Control Act unconstitutionally restricts free speech.**

The brief, which was filed on November 30 in federal district court for the Western District of Kentucky, argues that the new law violates the First Amendment.

The law, which went into effect in June, places stringent new restrictions on the sale and marketing of tobacco products. For instance, all advertising must use black text on a white background, with the exception of periodicals that have 85 percent or more adult readership; billboard ads for tobacco may not appear within 1,000 feet of elementary or secondary schools; and t-shirts promoting tobacco products are banned.

“The sweeping restrictions would impermissibly and unconstitutionally make it virtually impossible to advertise tobacco, a legal product to adults,” said Dan Jaffe, executive VP of the ANA, in a statement. “This is the most restrictive advertising legislation ever passed.”

“Censorship can become habit-forming. We have also seen proposals to ban or seriously restrict certain food ads and ads for prescription drug products. It is critically important for the advertising community to stand up for the First Amendment rights of all marketers, whenever they are threatened,” Jaffe said.

**Why it matters:** The ad groups are concerned that the new tobacco law could establish a precedent that opens the door to restrictions on marketing and advertising of other kinds of products, such as prescription drugs, alcoholic beverages, and video games.

[back to top](#)

Institute's 23rd National  
Advanced Forum on  
Advertising Law

Speaker: [Linda Goldstein](#)

New York Marriott Downtown  
New York, NY  
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January 26-27, 2010  
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## Wrigley Asked to Stop Eclipse Gum Ad Claims

**The National Advertising Review Board has come down with a decision recommending that the William Wrigley, Jr. Co. stop making certain claims in its ad for Eclipse Gum.**

As with many claims that come before the NAD and NARB, Wrigley's claims were challenged by a rival, in this case, Cadbury Adams USA, LLC. In its complaint filed with the NAD, Cadbury targeted ad claims stating: "Now Eclipse contains a natural ingredient, scientifically proven to help kill the germs that cause bad breath" and "Most other gums just mask bad breath. We kill the germs that cause it."

After reviewing Wrigley's research and ad claims, the NAD agreed with Cadbury. Wrigley appealed to the NARB, the appeals division of the National Advertising Review Council, the ad industry's self-regulatory body.

The NARB rejected Wrigley's appeal, and recommended that Wrigley stop claiming that "most other gums just mask bad breath." The board also suggested that Eclipse ads should avoid stating or implying that it has been scientifically proven that the magnolia bark extract in the gum kills or helps kill germs that cause breath. Additionally, the NARB said Wrigley should no longer claim that Eclipse's new formulation works better than the original.

The board said that, at most, Wrigley could claim that there is emerging evidence of the ability of magnolia bark extract to kill germs that cause bad breath.

"Wrigley respectfully disagrees with the NARB's findings and stands behind the scientific research regarding Eclipse gum with magnolia bark extract," said a Wrigley spokeswoman in a statement. "We do appreciate the time and support shown by the NARB during this self-regulatory process and will consider the panel's recommendations for future advertising."

**Why it matters:** As a self-regulatory body, the NARB's findings and recommendations do not have the force of law. However, more often than not, advertisers will comply with NAD and NARB recommendations. On occasion, the NAD will refer a dispute that does not get resolved to the Federal Trade Commission. However, the FTC has discretion whether or not to take a matter referred by the NAD.

[back to top](#)

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