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[Cat Fight Over Smelly Cat Litter Continues](#)

June 24, 2011 by [Tiffany Blofield](#)

Church & Dwight Co., Inc. (“C&D”) the maker of [Arm & Hammer® Super Scoop®](#) has sued the [Clorox Company \(“Clorox”\)](#), [the other leading seller of cat litter](#) in the United States, for false advertising under the Lanham Act and various state law claims.

This cat fight initially involved Clorox advertisements that depicted multiple cats shunning and refusing to use a litter box with Super Scoop®. As a person who is allergic to cats, I had not seen (or at least not paid attention to) the advertisements then at issue. C&D asserted that these advertisements were demonstrably false and contradicted by C&D’s independently conducted research. In addition, C&D contended that the Clorox study that it believed was substantiation for the advertisements was severely flawed. First, the Clorox study used eight cats at the same time (I am breaking out in hives just thinking about it). C&D contended that inter-cat behavior can impact a particular cat’s use of the litter box. Such behavior does not relate to rejection or preference of a particular type of cat litter. Not surprisingly, C&D contended that a typical household does not have eight cats. Second, C&D contended that there was a smelly waste problem. The aggregated waste does not account for different cats producing different amounts of waste. (I am glad I was not involved in this study.)

The case was initially dismissed in February of this year when Clorox pulled the challenged advertisements. However, C&D re-filed the lawsuit in March to address a new advertisement that Clorox was running. C&D contended that the new advertisement was “falsely touting the alleged cat waste odor elimination superiority of Clorox’s Fresh Step cat litters.” These allegedly false claims “upped the ante” by being made against the entire line of Arm & Hammer® cat litter products. The showpiece of the new commercial according to C&D is “an eye-catching demonstrative that compares the ostensible performance of the two cat litters.” C&D commissioned an independent lab to conduct a sensory study disproving the allegations and depictions in the commercial.

Last week, United States District Court Judge Jed Rakoff of the Southern District of New York experienced this cat fight first hand. He heard expert testimony from each side regarding a Clorox test—“the jar test” involving trained panelists rating the smell of jars with cat waste and ingredients from each cat litter product. (I am glad I did not participate in this study either.)

Because advertising costs a lot of money and is so important, it is not surprising that many companies take to the courts for protection from alleged false and misleading advertising by competitors. Is anyone aware of other advertising disputes related to the furry felines or other trusty pets?

