



April 9, 2009



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Georgia-Pacific Sues P&G Over Bounty Ads

Georgia-Pacific Corporation has filed a false advertising lawsuit against Procter & Gamble Company over P&G ads claiming that its Bounty towels feature "25% thicker quilts."

According to Georgia-Pacific's complaint, filed March 18 in federal court in the Northern District of Georgia, although the "quilts" (indented impressions) on the new Bounty paper towels may be thicker, the towels themselves are not. A study cited by the complaint and commissioned by Georgia-Pacific allegedly found the new towels were 5% thicker at most and in some cases were thinner than before.

Georgia-Pacific alleged that consumers view the "thicker quilts" claim to mean the towel itself is thicker. In support of its allegation, it quoted from a recent *Wall Street Journal* article stating that the new Bounty ads "introduce an upgrade to the company's core Bounty paper towels, which now promise a 25% thicker sheet."

Georgia-Pacific also took issue with ad claims that the new paper towel "cleans the mess with less," alleging that "there are no substantiated performance benefits attributable to having 25% thicker quilts."

The complaint requests a court order banning the ads and



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Topic:
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Speaker: [Christopher A. Cole](#)

L'Enfant Plaza Hotel
Washington, DC
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requiring P&G to recall any packaging bearing the "25% thicker quilts" claim, as well as unspecified compensatory and punitive damages, profits, and triple damages due to "the willful nature of P&G's false advertising."

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Actors Unions and Advertisers Strike Deal

The two actors unions—the Screen Actors Guild and the American Federation of Television and Radio Artists—announced that they have struck a provisional three-year contract with advertisers, effective April 1, 2009, through March 31, 2012.

The new contract provides for an immediate 5.1% boost in minimum pay rates to actors in the first year of the agreement, followed by a wage freeze for the next two years. Combined, that works out to an average raise of 1.7% per year over the next three years.

In the midst of the recession—which has hit the advertising industry hard—the actors unions may feel that any raise is better than none. A new global ad-spending forecast from WPP's Group M predicts that U.S. ad spending will fall 4.3% this year and another 6.8% next year. In addition, SAG has yet to renew its TV and theatrical contract, which expired in June, or its basic cable and video game contracts, which expired at the beginning of the year.

The ad deal is worth about \$900 million. It also provides for a minimum session fee (for appearing on the set) of \$567.10 for actors in commercials "made for and moved over" the Internet. Actors will also be guaranteed residuals of 1.3 times the minimum session fee during the first eight weeks the commercial is online and 3.5 times the minimum session fee for a commercial that is online for a year.

However, the provision would not take effect until April 1, 2011, meaning that actors will have to continue to negotiate their own minimum fees for Internet-only commercials for another two years.

The agreement is still tentative. It must be approved by the boards of both unions and then ratified by a majority of each of their memberships.

April 29, 2009
**American Advertising Federation
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Speaker: [Jeff Edelstein](#)

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May 19, 2009
**International Trademark
Association Annual Meeting**

Topic:
"Recent Developments in Right of
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Speaker: [Jeff Edelstein](#)

Washington State Convention &
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Seattle, WA
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June 4-6, 2009
**American Advertising Federation
National Conference 2009**

Speaker: [Jeff Edelstein](#)

Crystal Gateway Marriott
Arlington, VA
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June 18-19
**ABA Antitrust Section's Consumer
Protection Conference**

Topic:
Use, Misuse, and Disregard of

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Study Questions Anonymity of Behavioral Targeting Data

Behavioral targeting companies have long maintained that tracking users' online surfing habits in order to send them ads targeted to their interests does not compromise user privacy because the companies do not know users' names, addresses, or other personally identifiable information.

Now two researchers at the University of Texas at Austin have challenged the premise that using so-called anonymous data in the context of social networking guarantees user privacy. In a report titled "De-anonymizing Social Networks," the researchers assert they were able to use "anonymous" information to find out the identity of one in three Twitter users who also had Flickr accounts. "The main lesson of the paper is that anonymity is not sufficient for privacy when dealing with social networks," the report states.

The authors also questioned the claims of behavioral targeting companies such as NebuAd that their practice of using only anonymous information means users' privacy is secured. "Anonymity has been unquestionably interpreted as equivalent to privacy in several high-profile cases of data-sharing," the report states. "The CEO of NebuAd, a U.S. company that offers targeted advertising based on browsing histories gathered from ISPs, dismissed privacy concerns by saying that 'We don't have any raw data on the identifiable individual. Everything is anonymous.'" Shortly after making that statement to *The New York Times*, NebuAd's former CEO Bob Dykes resigned and the company shelved plans to buy data on online users' activity from ISPs.

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Supreme Court Won't Hear Ruling Against Anti-Spam Law

The U.S. Supreme Court has declined to review a decision by the Virginia Supreme Court finding the state's anti-spam law to be unconstitutional.

Jeremy Jaynes was originally sentenced to nine years in prison for allegedly spamming tens of thousands of AOL users in 2003 in violation of a state anti-spam law called the Computer Crimes Act.

Evidence of Actual Confusion in
Federal and State Regulatory
Proceedings

Speaker: [Christopher Cole](#)

Georgetown University Law Center
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June 25-26, 2009

Food and Drug Law Institute
Introduction to Drug
Law and Regulation:
A Program on Understanding How
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NEWSLETTER EDITORS

[Jeffrey S. Edelstein](#)

Partner

jedelstein@manatt.com

212.790.4533

[Linda A. Goldstein](#)

Partner

lgoldstein@manatt.com

212.790.4544

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Last year the Virginia Supreme Court reversed his conviction.

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The anti-spam law prohibited bulk email senders from falsifying information about their IP addresses or domain names. The Virginia Supreme Court found the law was unconstitutionally broad and could impermissibly inhibit protected speech. "State statutes that burden 'core political speech,' as this statute does, are presumptively invalid . . . " the court wrote.

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On three occasions in 2003, Jaynes spammed AOL subscribers with more than 10,000 messages in a 24-hour period, offering products such as a "Penny Stock Picker" and "History Eraser." A search of Jaynes' house turned up a collection of CDs containing more than 176 million email addresses and 1.3 billion email user names. He was not prosecuted under the federal CAN-SPAM Act because that law did not go into effect until 2004.

The Virginia Attorney General petitioned the U.S. Supreme Court for certiorari review, seeking reversal of the ruling because Jaynes was convicted for sending spam, and not noncommercial messages. He contended that the court based its ruling on a hypothetical scenario in which "some imagined spammer might be prosecuted for sending political or religious spam." On March 30 the Supreme Court declined to review the ruling.

Jaynes is currently in jail on an unrelated securities fraud matter.

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Google To Pay \$20 Million to Ad Search Marketers

Google Inc. has agreed to pay up to \$20 million to settle a class-action lawsuit brought by search marketers claiming that the giant online company served more ads than they had agreed to pay for.

The lawsuit arose out of a disagreement over the definition of "daily budget" in the AdWords agreement Google used for ad search marketers. The named plaintiffs, Minnesota printing company CLRB Hanson Industries and New Jersey resident Howard Stern, alleged that Google breached the AdWords contract by charging marketers up to 120% of their maximum daily budget.

In court papers, Google admitted that it sometimes charged up to 120% of marketers' maximum daily budgets, but argued that it did so only to make up for days when it underdelivered ads.

In a statement, a company spokesperson said, "Google believes the claims are without merit, but we are pleased to have the litigation behind us and to move forward with our business objectives."

Most of the settlement will be in the form of ad credits for AdWords marketers, but the two named plaintiffs will receive \$20,000 each and the plaintiffs' lawyers will receive more than \$5 million in attorneys' fees. In a prior ruling, a federal district court in San Jose limited the class to ad search marketers who advertised with Google for fewer than 30 days.

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EU Says U.S. Online Betting Ban Violates WTO Rules

In the latest development in a long-running dispute, the European Commission has released a draft report finding that the U.S. ban on European Internet gambling firms violates U.S. commitments under World Trade Organization rules.

But the EU, which governs trade policy for the 27-nation bloc, indicated that it would not file a complaint with the WTO and instead would seek to negotiate a resolution of the dispute with the United States.

The Justice Department under the Bush Administration waged an ongoing campaign against online betting, including arresting and prosecuting several prominent European Internet gambling executives. After Congress passed a law in 2006 making it illegal for U.S. banks and credit card companies to process payments to Internet gambling operations, European gambling sites lost billions of euros in market value.

At the time the law was passed, Republicans controlled the White House and Congress. Now power has shifted to the Democrats. It is not clear, however, how much backing the current White House would give to an effort to legalize online gambling in the United States.

In a summary statement, the EU said, "The report finds that U.S. laws on remote gambling and their enforcement against EU companies constitute a barrier to market access on EU economic interests. . . . Furthermore, EU companies are discriminated against: U.S. companies are allowed to freely operate online gambling on horse racing in the U.S., while European companies

and individuals cannot and even face legal action."

In a statement, EU Trade Commissioner Catherine Ashton said she hoped that the two sides could reach a quick resolution of the dispute. "It is for the U.S. to decide how best to regulate Internet gambling in its market, but this must be done in a way that fully respects WTO obligations," Ashton said.

The Justice Department and the U.S. Trade Representative's office said both agencies would review the report and discuss it with the EU.

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