BY FAX 202-326-2396 (7 pages total)

December 13, 2007

Donald S. Clark, Secretary Federal Trade Commission 600 Pennsylvania Avenue, N.W. Washington, DC 20580

Re: Commission Review of the Google-Doubleclick Merger

Dear Mr. Clark,

Regarding the motion that we filed yesterday requesting the recusal of the FTC Chairman Deborah Platt Majoras from the pending review of the Google-Doubleclick merger, we have subsequently learned additional facts that we believe are relevant to the disposition of this matter.

First, we wish to call to your attention two statements made yesterday by two different representatives of the Commission.

According to one news report:

We learned only yesterday that Jones Day is representing DoubleClick before the European Commission, not the (U.S.) Federal Trade Commission," said FTC spokeswoman Claudia Bourne Farrell. "Jones day has not appeared before the FTC on this matter. (Elinor Mills, *Groups ask FTC chair to recuse in Google-DoubleClick review*, CNET, Dec. 12, 2007.)

According to a second news report:

FTC spokesperson Nancy Judy said Platt Majoras is reviewing the petition with the FTC's chief ethics officer. She added that Jones Day had not appeared before the FTC on this matter, and that the agency only learned Tuesday that the firm was representing DoubleClick before the European Commission. (Wendy Davis, FTC Chair's Potential Bias on Google-Doubleclick Deal Questioned, Online Media Daily, Dec. 13, 2007)

We attached as Appendix 1 to our motion the screen shot of a web page that we had obtained when we visited the Jones Day web site yesterday. That page read:

Summary: Jones Day is <u>advising DoubleClick Inc.</u>, the digital marketing technology provider, <u>on the international and U.S. antitrust and competition law aspects</u> of its planned \$3.1 billion acquisition by Google Inc. The proposed acquisition will combine DoubleClick's expertise in ad management technology with Google's Internet search and content platform. The transaction is currently under review by the U.S. Federal Trade Commission (FTC) and European Commission. (Emphasis added)

This morning, we discovered that a search for the phrase "Joe Sims Doubleclick" returns a page that contains no text other than the Jones Day navigation bar. *See* Appendix 1 attached. However, when we examined the cached copy, stored on November 9, 2007, we found the original image. *See* Appendix 2 attached.

We then conducted a search for the phrase "Jones Day antitrust experience." This returned an extensive listing of antitrust matters pursued by the firm, but no listing of the representation of Doubleclick. *See* Appendix 3 attached. (Note that the Firefox browser will return a red-shaded box when the search term is not located. In this instance, the term "doubleclick" appears in a red-shaded box along with the highlighted term "Phrase not found.") However, when we viewed the cached copy of the page, dated December 6, 2007, the listing for "Doubleclick" appeared. *See* Appendix 4 attached.

There are at least four conclusions that one could draw from these additional facts:

- (1) Jones Day previously acknowledged that it was representing Doubleclick before the U.S. Federal Trade Commission;
- (2) The representation of Doubleclick at the Federal Trade Commission by Jones Day <u>began on or before November 9, 2007</u>;
- (3) Jones Day has sought to conceal the nature, scope, and duration of the relationship with its client Doubleclick by altering web pages on the firm's web site; and,
- (4) <u>Both FTC</u> spokespeople who addressed yesterday the representation of Doubleclick by Jones Day before the Commission were either misinformed or willfully misled the public.

Today, EPIC and CDD are filing a Freedom of Information Act request with the Commission seeking all records concerning the relationship between Jones Day in the Google-DoubleClick matter, as well as any other matter involving Jones Day and the investigation of consumer privacy complaints or the enforcement of consumer privacy law at the Commission. As these are records in possession of a federal agency, they are subject to federal open government laws, and the presumption is that they shall be made available to the public upon request. *Dep't of Air Force v. Rose*, 425 U.S. 352 (1976).

We urge you to ensure that all records regarding our request are preserved. Sanctions are available for the alteration or destruction of documents that are in the possession of a federal agency in a pending FOIA matter.

We are also notifying the appropriate Congressional oversight committees regarding our initial motion for the recusal of the Chairman as well as our pending Freedom of Information Act request for all documents concerning the relationship between the Federal Trade Commission and the Jones Day law firm in the pending review of the proposed Google-Doubleclick merger as well other matters concerning the interests of the public, the activities of the Commission, and the protection of consumer privacy.

Sincerely,

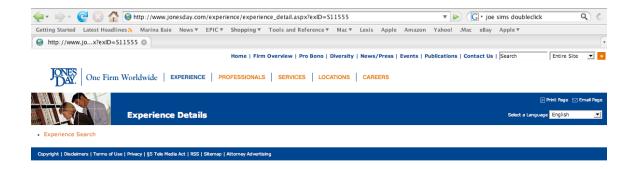
Marc Rotenberg, Esq. EPIC Executive Director

Jeffrey Chester, Executive Director Center for Digital Democracy

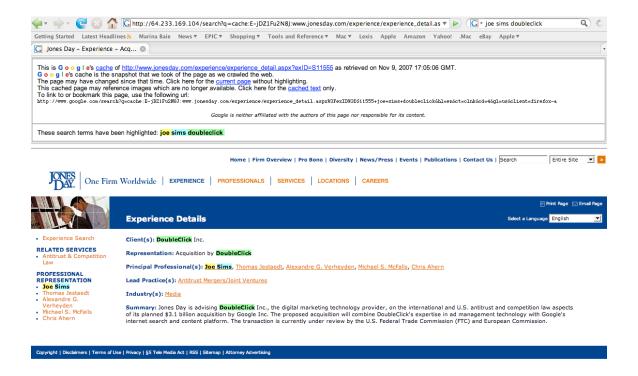
Cc: Chairman John D. Dingell, House Committee on Energy and Commerce Ranking Member Joe Barton, House Committee on Energy and Commerce

Chairman David Obey, House Committee on Appropriations Ranking Member Jerry Lewis, House Committee on Appropriations

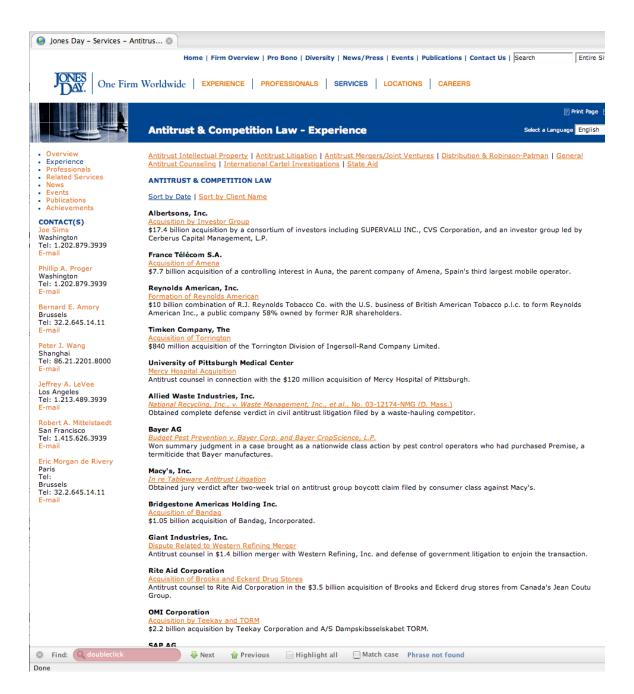
Search for "Joe Sims Doubleclick" (Dec. 13, 2007)



Cached copy of search for "Joe Sims Doubleclick" (Dec. 13, 2007)



Search for "Jones Day antitrust experience" (Dec. 13, 2007)



Cached Search for "Jones Day antitrust experience" (Dec. 13, 2007)

