

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 advising DoubleClick Inc., the digital marketing technology provider, on the international and U.S. antitrust and competition law aspects 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 began on or before November 9, 2007;
- (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) Both FTC 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

Appendix 1

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

http://www.jonesday.com/experience/experience_detail.aspx?exID=S11555

Getting Started Latest Headlines Marina Baie News EPIC Shopping Tools and Reference Mac Lexis Apple Amazon Yahoo! .Mac eBay Apple

http://www.jo...x?exID=S11555

Home | Firm Overview | Pro Bono | Diversity | News/Press | Events | Publications | Contact Us | Search | Entire Site

JONES DAY | One Firm Worldwide | EXPERIENCE | PROFESSIONALS | SERVICES | LOCATIONS | CAREERS

Experience Details Print Page Email Page

Select a Language English

• Experience Search

Copyright | Disclaimers | Terms of Use | Privacy | 55 Tele Media Act | RSS | Sitemap | Attorney Advertising

Appendix 2

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

The screenshot shows a web browser window with the address bar displaying a Google cache URL: http://64.233.169.104/search?q=cache:E-JDZ1Fu2N8J:www.jonesday.com/experience/experience_detail.aspx?texID=S11555. The search terms "joe sims doubleclick" are visible in the search bar. The page content includes a notice about the Google cache, a navigation menu with links like "Home", "Firm Overview", and "Pro Bono", and a main section titled "Experience Details".

This is Google's cache of http://www.jonesday.com/experience/experience_detail.aspx?texID=S11555 as retrieved on Nov 9, 2007 17:05:06 GMT. Google's cache is the snapshot that we took of the page as we crawled the web. The page may have changed since that time. Click here for the [current page](#) without highlighting. This cached page may reference images which are no longer available. Click here for the [cached text](#) only. To link to or bookmark this page, use the following url: http://www.google.com/search?q=cache:E-JDZ1Fu2N8J:www.jonesday.com/experience/experience_detail.aspx?texID=S11555+joe+sims+doubleclick&hl=en&ct=clnk&cd=4&gl=us&client=firefox-a

Google is neither affiliated with the authors of this page nor responsible for its content.

These search terms have been highlighted: **joe sims doubleclick**

Home | Firm Overview | Pro Bono | Diversity | News/Press | Events | Publications | Contact Us | Search | Entire Site

JONES DAY | One Firm Worldwide | EXPERIENCE | PROFESSIONALS | SERVICES | LOCATIONS | CAREERS

Experience Details Print Page Email Page Select a Language: English

- Experience Search
- RELATED SERVICES
 - Antitrust & Competition Law
- PROFESSIONAL REPRESENTATION
 - Joe Sims
 - Thomas Jestaedt
 - Alexandre G. Verheyden
 - Michael S. McFalls
 - Chris Ahern

Client(s): **DoubleClick** Inc.

Representation: Acquisition by **DoubleClick**

Principal Professional(s): **Joe Sims**, [Thomas Jestaedt](#), [Alexandre G. Verheyden](#), [Michael S. McFalls](#), [Chris Ahern](#)

Lead Practice(s): [Antitrust Mergers/Joint Ventures](#)

Industry(s): [Media](#)

Summary: Jones Day is advising **DoubleClick** Inc., the digital marketing technology provider, on the international and U.S. antitrust and competition law aspects 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.

Copyright | Disclaimers | Terms of Use | Privacy | 5 Tele Media Act | RSS | Sitemap | Attorney Advertising

Appendix 3

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

The screenshot shows the Jones Day website's "Antitrust & Competition Law - Experience" page. The page features a navigation menu at the top with links for Home, Firm Overview, Pro Bono, Diversity, News/Press, Events, Publications, and Contact Us. Below the navigation is a search bar and a language selector set to English. The main content area is titled "Antitrust & Competition Law - Experience" and includes a sidebar with a "CONTACT(S)" section listing various office locations and contact information for Joe Sims, Phillip A. Proger, Bernard E. Amory, Peter J. Wang, Jeffrey A. LeVee, Robert A. Mittelstaedt, and Eric Morgan de Rivery. The main content lists several antitrust cases and acquisitions, including the acquisition of Amertek by Albertsons, Inc., the acquisition of Amena by France Télécom S.A., the formation of Reynolds American, Inc., the acquisition of Torrington by Timken Company, the acquisition of Mercy Hospital by the University of Pittsburgh Medical Center, the acquisition of Waste Management, Inc. by Allied Waste Industries, Inc., the acquisition of Bayer AG, the acquisition of Bandag by Bridgestone Americas Holding Inc., the acquisition of Western Refining, Inc. by Giant Industries, Inc., the acquisition of Brooks and Eckerd Drug Stores by Rite Aid Corporation, and the acquisition of Teekay Corporation and A/S Dampskibsselskabet TORM by OMI Corporation. The page also includes a search bar at the bottom with the text "doubleclick" and a "Phrase not found" message.

Jones Day – Services – Antitrust... Home | Firm Overview | Pro Bono | Diversity | News/Press | Events | Publications | Contact Us | Search | Entire Site

JONES DAY | One Firm Worldwide | EXPERIENCE | PROFESSIONALS | SERVICES | LOCATIONS | CAREERS

Antitrust & Competition Law - Experience

Print Page | Select a Language English

- Overview
- Experience
- Professionals
- Related Services
- News
- Events
- Publications
- Achievements

CONTACT(S)

Joe Sims
Washington
Tel: 1.202.879.3939
E-mail

Phillip A. Proger
Washington
Tel: 1.202.879.3939
E-mail

Bernard E. Amory
Brussels
Tel: 32.2.645.14.11
E-mail

Peter J. Wang
Shanghai
Tel: 86.21.2201.8000
E-mail

Jeffrey A. LeVee
Los Angeles
Tel: 1.213.489.3939
E-mail

Robert A. Mittelstaedt
San Francisco
Tel: 1.415.626.3939
E-mail

Eric Morgan de Rivery
Paris
Tel:
Brussels
Tel: 32.2.645.14.11
E-mail

[Antitrust Intellectual Property](#) | [Antitrust Litigation](#) | [Antitrust Mergers/Joint Ventures](#) | [Distribution & Robinson-Patman](#) | [General Antitrust Counseling](#) | [International Cartel Investigations](#) | [State Aid](#)

ANTITRUST & COMPETITION LAW

[Sort by Date](#) | [Sort by Client Name](#)

Albertsons, Inc.
[Acquisition by Investor Group](#)
\$17.4 billion acquisition by a consortium of investors including SUPERVALU INC., CVS Corporation, and an investor group led by Cerberus Capital Management, L.P.

France Télécom S.A.
[Acquisition of Amena](#)
\$7.7 billion acquisition of a controlling interest in Auna, the parent company of Amena, Spain's third largest mobile operator.

Reynolds American, Inc.
[Formation of Reynolds American](#)
\$10 billion combination of R.J. Reynolds Tobacco Co. with the U.S. business of British American Tobacco p.l.c. to form Reynolds American Inc., a public company 58% owned by former RJR shareholders.

Timken Company, The
[Acquisition of Torrington](#)
\$840 million acquisition of the Torrington Division of Ingersoll-Rand Company Limited.

University of Pittsburgh Medical Center
[Mercy Hospital Acquisition](#)
Antitrust counsel in connection with the \$120 million acquisition of Mercy Hospital of Pittsburgh.

Allied Waste Industries, Inc.
[National Recycling, Inc., v. Waste Management, Inc., et al., No. 03-12174-NMG \(D. Mass.\)](#)
Obtained complete defense verdict in civil antitrust litigation filed by a waste-hauling competitor.

Bayer AG
[Budget Pest Prevention v. Bayer Corp. and Bayer CropScience, L.P.](#)
Won summary judgment in a case brought as a nationwide class action by pest control operators who had purchased Premise, a termiticide that Bayer manufactures.

Macy's, Inc.
[In re Tableware Antitrust Litigation](#)
Obtained jury verdict after two-week trial on antitrust group boycott claim filed by consumer class against Macy's.

Bridgestone Americas Holding Inc.
[Acquisition of Bandag](#)
\$1.05 billion acquisition of Bandag, Incorporated.

Giant Industries, Inc.
[Dispute Related to Western Refining Merger](#)
Antitrust counsel in \$1.4 billion merger with Western Refining, Inc. and defense of government litigation to enjoin the transaction.

Rite Aid Corporation
[Acquisition of Brooks and Eckerd Drug Stores](#)
Antitrust counsel to Rite Aid Corporation in the \$3.5 billion acquisition of Brooks and Eckerd drug stores from Canada's Jean Coutu Group.

OMI Corporation
[Acquisition by Teekay and TORM](#)
\$2.2 billion acquisition by Teekay Corporation and A/S Dampskibsselskabet TORM.

SAP AG

Find: doubleclick Next Previous Highlight all Match case Phrase not found

Done

Appendix 4

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

Jones Day - Services - Antitrust...

This is Google's cache of http://www.jonesday.com/services/services_experience.aspx?AdvancedServices=edcc7a45-358e-4425-abc0-105c44448fef as retrieved on Dec 6, 2007. Google's cache is the snapshot that we took of the page as we crawled the web. The page may have changed since that time. Click here for the [current page](#) without highlighting. This cached page may reference images which are no longer available. Click here for the [cached text](#) only. To link to or bookmark this page, use the following url: http://www.google.com/search?q=cache:b6AtuTv4DdAJ:www.jonesday.com/services/services_experience.aspx?AdvancedServices=edcc7a45-358e-4425-abc0-105c44448fef+jones+day+antitrust&hl=en&lr=&btnG=Google+Search

Google is neither affiliated with the authors of this page nor responsible for its content.

These search terms have been highlighted: **jones day antitrust experience**

Home | Firm Overview | Pro Bono | Diversity | News/Press | Events | Publications | Contact Us | Search | Entire Site

JONES DAY | One Firm Worldwide | EXPERIENCE | PROFESSIONALS | SERVICES | LOCATIONS | CAREERS

Print Page | Email Page | Select a Language: English

Antitrust & Competition Law - Experience

- Overview
- Experience**
- Professionals
- Related Services
- News
- Publications
- Achievements

CONTACT(S)

Joe Sims
Washington
Tel: 1.202.879.3939
E-mail

Phillip A. Proger
Washington
Tel: 1.202.879.3939
E-mail

Bernard E. Amory
Brussels
Tel: 32.2.645.14.11
E-mail

Peter J. Wang
Shanghai
Tel: 86.21.2201.8000
E-mail

Jeffrey A. LeVee
Los Angeles
Tel: 1.213.489.3939
E-mail

Robert A. Mittelstaedt
San Francisco
Tel: 1.415.626.3939
E-mail

Eric Morgan de Rivery
Paris
Tel:
Brussels
Tel: 32.2.645.14.11
E-mail

Antitrust Intellectual Property | Antitrust Litigation | Antitrust Mergers/Joint Ventures | Distribution & Robinson-Patman | General Antitrust Counseling | International Cartel Investigations | State Aid

ANTITRUST & COMPETITION LAW

[Sort by Date](#) | [Sort by Client Name](#)

Albertsons, Inc.
[Acquisition by Investor Group](#)
\$17.4 billion acquisition by a consortium of investors including SUPERVALU INC., CVS Corporation, and an investor group led by Cerberus Capital Management, L.P.

France Télécom S.A.
[Acquisition of Amena](#)
\$7.7 billion acquisition of a controlling interest in Auna, the parent company of Amena, Spain's third largest mobile operator.

Reynolds American, Inc.
[Formation of Reynolds American](#)
\$10 billion combination of R.J. Reynolds Tobacco Co. with the U.S. business of British American Tobacco p.l.c. to form Reynolds American Inc., a public company 58% owned by former RJR shareholders.

Timken Company, The
[Acquisition of Torrington](#)
\$840 million acquisition of the Torrington Division of Ingersoll-Rand Company Limited.

University of Pittsburgh Medical Center
[Mercy Hospital Acquisition](#)
Antitrust counsel in connection with the \$120 million acquisition of Mercy Hospital of Pittsburgh.

Allied Waste Industries, Inc.
[National Recycling, Inc., v. Waste Management, Inc., et al., No. 03-12174-NMG \(D. Mass.\)](#)
Obtained complete defense verdict in civil **antitrust** litigation filed by a waste-hauling competitor.

Bayer AG
[Budget Pest Prevention v. Bayer Corp. and Bayer CropScience, L.P.](#)
Won summary judgment in a case brought as a nationwide class action by pest control operators who had purchased Premise, a termiticide that Bayer manufactures.

Macy's, Inc.
[In re Tableware Antitrust Litigation](#)
Obtained jury verdict after two-week trial on **antitrust** group boycott claim filed by consumer class against Macy's.

Bridgestone Americas Holding Inc.
[Acquisition of Bandag](#)

Find: doubleclick | Next | Previous | Highlight all | Match case

Done