



September 30, 2009



## In This Issue

- [CVS Settles AirShield Probe for \\$2.8 Million](#)
- [Twitter Opens Doors to Advertisers](#)
- [Hacker Pleads Guilty to Massive Data Thefts](#)
- [Microsoft Files Five Lawsuits Over "Malvertising"](#)
- [Ad Watchdog Faults Tooth Whitener for Fake Testimonials](#)

## CVS Settles AirShield Probe for \$2.8 Million

CVS Caremark Corp. has agreed to pay close to \$2.8 million to settle charges by the Federal Trade Commission that it made unsubstantiated claims that its AirShield health supplements could stave off colds and fight germs.

The money will be used to refund customers who bought AirShield between July 2005 and November 2008. The FTC will administer the refund program based on purchase information provided by CVS.

The FTC had charged the drugstore chain with deceptive advertising. In July, Rite Aid Corp. reached a similar settlement with the Commission, agreeing to pay \$500,000 to settle charges that it made misleading claims about the efficacy of its Germ Defense products.

Both products were created to compete with Airborne, a popular health supplement that claimed to help prevent colds. In August 2008, Airborne Inc. agreed to stop running misleading ads and change its packaging to settle an FTC probe. Airborne also agreed to kick in as much as \$6.5 million to a \$23.5 million fund created by a class action lawsuit against Airborne in California.

The packaging for CVS's AirShield, the store brand equivalent to Airborne, was changed in 2008, CVS said in a statement. "CVS has also agreed to pay



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\$2.78 million to the FTC to cover the costs of a refund program for customers who purchased CVS AirShield from July 2005 through November 2008," the company said.

**Why it matters:** In announcing the settlement with CVS, the FTC is warning all marketers to be careful in their claims about the efficacy of health supplements. "With orders against Airborne, Rite Aid, and now CVS, manufacturers and retailers are on notice that they have to tell the truth about what dietary supplements can and cannot do," said David Vladeck, director of the FTC's Bureau of Consumer Protection.

[back to top](#)

## Twitter Opens Doors to Advertisers

**Twitter, the social networking Web site that has drawn tens of millions of users but has yet to turn a profit, has changed its terms to potentially open up the free service to advertisers.**

"In the Terms, we leave the door open for advertising," Twitter co-founder Biz Stone said in a post on his blog earlier this month. "We'd like to keep our options open as we've said before."

Twitter is a free microblogging service that allows users to send and receive messages of up to 140 characters known as tweets. Since its launch three years ago, Twitter has experienced explosive growth and received tens of millions of dollars in investments but hasn't generated any revenue.

The new terms read: "The Services may include advertisements, which may be targeted to the Content or information on the Services, queries made through the Services, or other information. The types and extent of advertising by Twitter on the Services are subject to change. In consideration for Twitter granting you access to and use of the Services, you agree that Twitter and its third-party providers and partners may place such advertising on the Services."

Twitter has been exploring ways to generate revenue. Earlier this year, Stone floated the idea of charging fees for Twitter accounts used as a marketing tool by businesses. In June, Twitter started issuing authenticity badges as a way to verify that people "tweeting" are who they claim to be. Such badges are seen as something businesses might be willing to pay for.

**Why it matters:** Social networks like Facebook and Twitter are considered by many to be the next wave in advertising. While these social networks present opportunities for online marketers, they also raise privacy and other legal questions that need to be thoroughly addressed before marketers start employing them.

### UPCOMING EVENTS

September 30, 2009  
Promotion Marketing  
Association Webinar  
Topic: "ABC's of UGC: User  
Generated Content Contests"  
Speaker: [Linda Goldstein](#)  
[for more information](#)

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October 5-6, 2009  
NAD Annual Conference 2009  
Topic: "Developments in  
Endorsements and  
Testimonials"  
Moderator: [Jeff Edelstein](#)  
W Hotel  
New York, NY  
[for more information](#)

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October 7-9, 2009  
Digital Music Forum West  
Topic: "Digital Music  
Innovation: What's Next?"  
Speaker: [Aydin Cajinalp](#)  
The Roosevelt Hotel  
Los Angeles, CA  
[for more information](#)

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October 27, 2009  
American Conference  
Institute's 3rd Annual Forum  
on Sweepstakes Contests and  
Promotions  
Speaker: [Linda Goldstein](#)  
  
The Carlton Hotel

[back to top](#)

## Hacker Pleads Guilty to Massive Data Thefts

**A hacker responsible for many of the biggest identity thefts of the decade pleaded guilty earlier this month as part of a plea bargain that will send him to prison for up to 25 years.**

Albert Gonzalez, 28, of Miami, admitted to hacking into the computer systems of retailers such as TJX, BJ's Wholesale Club, OfficeMax, Boston Market, Barnes & Noble, and Sports Authority. Federal prosecutors say Gonzalez's activities led to the theft of tens of millions of credit and debit card numbers.

Gonzalez entered guilty pleas in U.S. District Court in Boston to 19 counts of conspiracy, computer fraud, wire fraud, access device fraud, and aggravated identity theft. He also pleaded guilty to a New York indictment charging one count of conspiracy to commit wire fraud.

Gonzalez faces 15 to 25 years in prison in the Massachusetts case and up to 20 years in the New York case. The sentences would run concurrently. Sentencing is scheduled for December 8.

Authorities said Gonzalez headed a group that targeted large retailers. Gonzalez, who was known online as "soupnazi," is a self-taught computer genius. In 2003, Gonzalez was arrested for hacking but was not charged because he became an informant, helping the Secret Service find other hackers. But while he was ratting out his competition, authorities said he continued his own illegal activities.

Authorities said Gonzalez amassed a small fortune during that time. Under the plea deals, Gonzalez must forfeit more than \$2.7 million, as well as his condo, car, a Tiffany ring he gave to his girlfriend, and Rolex watches he gave to his father and friends.

The New York and Massachusetts indictments said Gonzalez and two foreign co-defendants used "wardriving," or cruising through different areas looking for accessible retailer wireless Internet signals. Once they located a vulnerable network, they installed "sniffer programs" that captured credit and debit card numbers as they moved through a retailer's processing computers. Then they tried to sell the data overseas.

Gonzalez still faces separate charges by federal prosecutors in New Jersey for allegedly targeting customers of convenience store chain 7-Eleven and supermarket chain Hannaford Brothers Co.

**Why it matters:** In the past decade, the use of computer networks to

New York, NY

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November 5-6, 2009

31st Annual Promotion

Marketing Law Conference

Topic: "The Battle of the Brands"

Moderator: [Chris Cole](#)

Fairmont Hotel

Chicago, IL

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November 5-6, 2009

31st Annual Promotion

Marketing Law Conference

Topic: "Sweepstakes &

Contests: Lend Me Your Ear and I'll Sing You a Song..."

Speaker: [Linda Goldstein](#)

Fairmont Hotel

Chicago, IL

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November 18-20, 2009

4th Annual Word of Mouth

Marketing Association Summit

Topic: "FTC Developments"

Speaker: [Anthony DiResta](#)

Paris Hotel

Las Vegas, NV

[for more information](#)

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transfer and store credit and debit card data has exploded. Ferreting out and prosecuting identity thieves is critical to maintaining consumer trust in a system that has become an integral part of doing business in this country.

[back to top](#)

## Microsoft Files Five Lawsuits Over “Malvertising”

**In a bid to fight a growing problem, Microsoft announced that it has filed five lawsuits over online ads infected with malicious code.**

In the past, Microsoft has attempted to work with online ad networks to prevent such "malvertising." This is the first time it has gone to court. The businesses that Microsoft is going after, it says, used popular online ad platforms to hide malicious code and try to infect unsuspecting users. If a user follows a link presented in the ad, he could end up with damaged data or stolen information, or even find his PC under someone else's control (a so-called zombie computer).

"Our filings in King County Superior Court in Seattle outline how we believe the defendants operated, but in general, malvertising works by camouflaging malicious code as harmless online advertisements," Microsoft Associate General Counsel Tim Cranton said in a blog posting. "Although we don't yet know the names of the specific individuals behind these acts, we are filing these cases to help uncover the people responsible and prevent them from continuing their exploits," Cranton said.

Cranton compared the most recent lawsuits to legal action that Microsoft has taken in the past against those suspected of click fraud or instant messaging spam.

"This work is vitally important because online advertising helps keep the Internet up and running," Cranton said. "It's the fuel that drives search technologies. It pays for free online services like Windows Live, Facebook, Yahoo, and MSN. Fraud and malicious abuse of online ad platforms are therefore a serious threat to the industry and for all consumers and businesses that rely on these free services."

**Why it matters:** Online scammers never really go away, they just change their tactics. They pose a serious problem for companies and Internet marketers because they make consumers suspicious of all ads, even legitimate ones. The government has limited resources to fight these scammers, and Microsoft has used private lawsuits to help bolster government efforts.

[back to top](#)

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## Ad Watchdog Faults Tooth Whitener for Fake Testimonials

**The Electronic Retailing Self Regulation Program, an industry ad watchdog that is part of the National Advertising Review Council, has criticized a company for operating a Web site that purported to post reviews from consumers of its own product.**

The company, Ecommerce Solutions, markets a tooth whitener called Vibrant White. It also ran a Web site called top-teeth-whitening-reviews.com, which purportedly posted consumer reviews of teeth whitening products. The site hyped Vibrant White without disclosing that it was affiliated with Ecommerce Solutions or the product, according to the ERSRP.

Procter & Gamble, which makes Crest Whitestrips, challenged Ecommerce Solutions, saying the "testimonials" were deceptive.

The ERSRP concurred with P&G. "At the time this advertising was disseminated, there was no disclosure on the Web site indicating that Ecommerce Solutions controls and operates the Web site and/or has a material connection with one of the products being reviewed on the Web site," it wrote. It concluded that visitors "may have been left with the lasting impression of the inflated popularity and superiority of the marketer's product."

Ecommerce Solutions said it is "extensively revising" the site and will disclose that it has a material connection with Vibrant White.

Earlier this summer, plastic surgery company Lifestyle Lift paid \$300,000 to settle allegations by New York State Attorney General Andrew Cuomo over fake online reviews of its services that were, in fact, anonymously posted by company employees.

**Why it matters:** Online reviews and testimonials are currently on the radar screen of state and federal regulators. Competitors also have a stake in ensuring that companies do not post fake reviews or testimonials touting their own products. The Federal Trade Commission is in the process of updating its guides on testimonials. The revised guides are expected to cover this business practice explicitly.

[back to top](#)

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