

# Bots and False Advertising

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In 2015, plaintiffs filed a lawsuit against Ashley Madison, alleging that the company had surreptitiously employed an “army of fembots” to lure unsuspecting men into cheating on their spouses. (You can read our coverage of that case and related warnings [here](#).) Not satisfied with having broken up countless homes, the bots are back, and this time they’re trying to lure people away from their money. At least that’s what Skillz Platform alleges in a false advertising lawsuit against its competitor, Papaya Gaming.

Papaya offers mobile gaming apps in which players can compete for the chance to win cash prizes. It advertises that players are “matched with other players within the same skill level” and that each game is “totally fair and skill-based.” Some players have expressed their doubts, posting comments online in which they suspect that the company unfairly matches human players against bots. Papaya has responded to many of these comments, but their responses neither confirm nor deny whether bots are playing the games.

Skillz filed a lawsuit against Papaya alleging, among other things, that Papaya falsely advertises that all players on its platform are human. In its motion to dismiss, Papaya argued that it never expressly stated that. Although a New York federal court agreed that Skillz hadn’t identified any statements that were expressly false, Skillz had identified statements – including references to “individuals” and “players” – that may imply that consumers are playing against humans, rather than bots. If Papaya does employ bots, these claims are actionable.

The court found that Skillz had plausibly alleged that Papaya’s implicit representations about the humanity of its players were material under the Lanham Act because they concern a material quality of the platform. Skillz’s quotes from consumer reviews complaining about Papaya’s bot infestation helped to bolster that argument (even if those reviews may not be later admissible at trial.) The court also found that Skillz had adequately pled an injury through a loss of sales and market share as a result of Papaya’s representations.

Although this case isn’t over yet, the decision suggests that you should use care when engaging with bots. If your goal is to fight the bots, examples of good strategies abound. See, for example, how the Bionic Woman foiled a group of fembots’ attempts to seize control of a weather station in 1976 or how Austin Powers was able to turn the tables on a group of sinister fembots in 1997. But if your goal is to befriend and work with the bots, I suggest you start by reading this [award-winning article](#) by my colleagues.