



DOZIER

The Law of PPC Advertising

ARE YOU BEING RIPPED OFF?

MANY OF THE LEGAL ISSUES existing today have little, or no, clear legal authority to guide us. This is because many of the abuses are:

- Not discovered.
- When they are discovered by the advertiser, they are settled confidentially.
- When litigated, it can take years to get a decision that is confusing, inconsistent and contradictory.

Yahoo! and MSN recently launched a new and improved pay-per-click (PPC) advertising solution because the companies can make a lot more money from you through a PPC model — the most dominant advertising revenue model today. Here are the three biggest PPC issues to which you need to be paying attention:

➤ **CLICK FRAUD** Traditionally a competitor would click on your ad, making you spend more money for poor results, leading you to deciding not to bid as aggressively or maintain a big budget with the advertisers, which leads your competitor to outbid you at a deflated cost. The more prevalent problem today is advertising distributor fraud. This occurs when your ads are shown on “partner” sites in which a revenue share is paid whenever a click through occurs. There are an infinite number of ways for this type of fraud to be perpetrated. The best approach you can take is to monitor your advertising records and log files and identify any unusual spikes in volume. You may, or may not, get much

John Dozier is president of Dozier Internet Law, PC, a law firm representing small and mid-sized online businesses. He can be reached at jwd@cybertriallawyer.com or online at Cybertriallawyer.com.

BY JOHN DOZIER

help from the search engine. Without naming names, one search engine seems to be very good and proactive, while most other search engines seem to miss a lot of fraud. Run PPC advertising on multiple sites and you'll see what I mean when you have a fraud issue arise.

➤ **IMPRESSION FRAUD** This type of fraud comes from a competitor or someone marketing on its behalf. Almost all of the quality search engines use algorithms to present ads. Simplified dramatically, a good explanation is that your bid and your ad click rate determine presentation order. It is not a mere coincidence this approach generates maximum revenue for the search engine. Your competitors can drive down your ad popularity (click

The more prevalent problem today is advertising distributor fraud.

rate) by generating a huge volume of automated searches for your key terms but never clicking on your ad. This drops your popularity, which allows your competitor to bid lower but get a higher ad ranking because your competitor disabled his/her own ads when running the “impression attack.” Don't think, however, that you can necessarily figure out who is doing this by finding the competitor whose ads have been disabled. Affiliate marketers will run these attacks against you, other competitors and even their own client.

➤ **SEARCH-TERM ABUSE** This is not the trademark infringement issue concerning a competitor buying up your name as a

keyword or search term for PPC. This is about non-competitors running programs to identify search terms that are popular, buying the PPC advertising in bulk from search engines and using your company name in its main advertising title. My law firm had a leading and well respected technology search engine doing just that against us. It's false advertising, at a minimum, but a quick call to the CEO resolved the matter for us. However, it may not resolve the issue for others being targeted in this way. The other problem is, in fact, the search engines themselves. It used to be the only ads presented were based upon the search terms selected. At least one major search engine is presenting PPC ads based upon some ill-advised algorithm that identifies likely ads of interest to the party searching. Thus, one client had all of its competitors' ads being presented when users searched the name of the

client, even when none of the competitors had purchased the terms.

I am reminded of the story about the lion's prey waking up in Africa every morning. It doesn't have to be the fastest in the pack to live another day — just not the slowest. The message for you is that you don't have to shut down the fraudsters. Just stay on top of things and get them to pick on someone else! ■

The information in this article is not intended to be legal advice. Always consult your attorney when faced with legal issues.