



Legal Issues Research in the Search Engine Marketing

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Abstract

The development of e-commerce has been a threat to the security of personal privacy, nowadays it is relatively weak for the foundation of network privacy protection in China, that needs further improvement and development. This paper has analyzed reasons which were caused by a variety of infringement phenomena of e-commerce privacy, and carried out measures of privacy protection in e-commerce.

Key words: E-commerce; Network privacy; Information security technology; Secure protocol; Safety measures

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INTRODUCTION

Search engine marketing runs through every field of the network marketing, is one of the fastest growing areas in the network marketing market, is the first channel to guide users to obtain information on the website, the functions of search engine marketing in the enterprise marketing process is self-evident.

As users rely on search engines constantly enhancing, the legal issues are increasingly prominent. Due to the lack of direct legal basis for the search engine industry monopoly, unfair competition, infringement issues, challenges from the legal environment have made the

search engine marketing prospects be faced with many uncertain factors, therefore legal issues can not be ignored research topic in the development process of the search engine industry.

LEGAL ISSUES EXISTED IN THE SEARCH ENGINE MARKETING

Search engine marketing has opened up a new era of network marketing, but along with its rapidly development, also is facing challenges from the legal environment, in practice, beyond the legal deviate events record now. How to go on the legal regulation of the search engine industry, and promote the healthy development of the search engine industry, have been get more and more widespread concern. Nowadays, there are the following categories of classic legal issues in the search engine marketing: infringement fraud, platform monopoly, loss of privacy, unfair competition, openness hidden.

Infringement Fraud

Infringing acts refer to the perpetrator should bear the liability of its damage arising violations. Infringing phenomena in the network are legal issues that the search engine service providers and marketers are likely to face at any time, which is inevitable. In the search engine marketing environment, search results can be obtained as long as the user is typing the relevant keywords, if the search site does not have copyright and browsing services, does not have the distribution rights for movies and software download, does not have ownership and provides a variety of software services and so on, that all can be directly attributed to a tort.

Platform Monopoly

According to the provisions of China's "anti-monopoly law", monopolistic behavior means eliminate or restrict

competition, and may eliminate or restrict competition behavior. In the search engine marketing, due to users will most probably choose a small number of services provided by the search engine service provider, there are almost no possibility of equality between recorded websites and search engines service providers.

Far as the news of Tencent Technology on April 12th, 2010, iResearch released on the 12th “Chinese search engine market share report 2009-2010”, that showed, in the Chinese search engine market of 2009, the sum of revenue share about Baidu and Google are 96.2%, the sum of web search request share about Baidu and Google are 94.9%, basically monopolized the Chinese search engine market. In accordance with the provisions of the AML, the two operators of the total market share in the relevant market reach two-thirds, achieve market dominance status.

Table 1
April 2009 Search Engines Use Comparison Chart

Name of search engines	Use ratio/%
Baidu	59.14
Google	14.46
Sougou	7.55
Youdao	6.65
Yahoo	6.53
Sousou	5.67

Loss of Privacy

Privacy refers to private life of tranquility and private information secret of natural persons which are protected by law, is a right of personality that means no unlawful intrusion, awareness, collection, use and public by others, and the subject of rights has the right to decide on the extent to which others can intervene private life on their own, whether to publicly privacy for others, as well as the scope and extent of publicity and so on. With the

continuous development of society, the rights and dignity of individuals has been paid more and more attention, meanwhile as the development of social networking technology, privacy in the network is more and more easily to be infringed. Consumer surveys and market research are the basic business marketing strategies, in order to achieve goals shortcut, search engine providers will take a variety of means, that is likely to appear the situations of illegal collection and use of personal information, what’s worse, collect users’ personal information to provide to merchants for searching online, at the same time gain revenues that are provided by merchants, which is a more severe and obvious invasion of privacy acts, and have greatly damaged the legitimate rights and interests of the people.

Behavior invasion of personal privacy in cyberspace: illegal collection and make use of personal data; unlawful interference and monitor the private life; trespassing and pry into the personal realm; unauthorized disclosure of others’ privacy.

In early 2008, the person in charge of the China Internet Network Information Center introduced that in their recent survey, queried users whether to search their own names through search engines. Among them, users that searched their own names accounted for more than 30%, and users that searched their own names and seized their private information accounted for nearly 30%. (Detailed statistics shown in Figure1). I tried to enter my own name to Baidu search box, then found own university, college, and participated in the activities that all can be displayed. Efforts to the protection of personal privacy caused questioned, and it’s more helpful to trigger readers to think about.

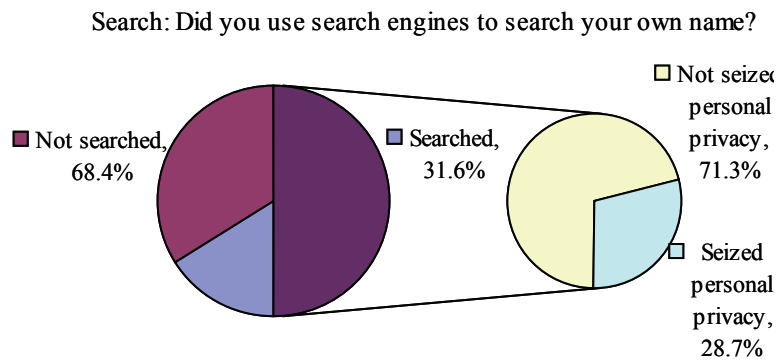


Figure 1
Did You Use Search Engines to Search Your Own Name?

Unfair Competition

Unfair competition means series of competition that operators violate the provisions of the law, harm the legitimate rights and interests of other operators, disturb social economic order, violate market order and market rules, as well as corresponding legal norms. In the search engine market, when users need to know about a product

or service, they often make use of relevant keywords to search, keyword advertising becomes the search engine marketing interactive media. Nowadays, keyword advertising has been mostly paid by click rate, but on the clicked running process, click fraud is a common phenomenon, may be derived from the competitors that want to consume rival advertising costs, or search engine providers that want to get more click commissions. What’s

the most common are that to click enterprise keywords to show up other spam links, even competitors' websites, which usually damage the legitimate rights and interests of enterprises.

Openness Hidden

When search engines provide users with the query results, the need to provide the search results are arranged in good order, and this sequence is obtained by several different ways to determine. According to the analysis, the two most common are search engine optimization (SEO) and PPC, accounting for 18.7% and 47.0%, respectively, PPC's position is evident. Search engine PPC service that provided by Baidu is purchased by the customers for their web keyword ranking and as a pay-per-click service, therefore the number of bids to determine the ranking position. Typically by adjusting per click paid the price, customers control their own ranking in a specific keyword search results.

According to the analysis, on average, compared to 2009, enterprise is expected that in 2010 will spend over 43% of the capital in search engine optimization, while spend 37% in paid search.

Table 2
The Statistics of Development Scale of PPC Ranking Search Market in 2002 to 2006

Time	Share / Hundred million RMB	Growth rate /%
2002	0.2	
2003	1.9	850
2004	4	110
2005	8	100
2006	15	87.5

For PPC, this fact can't be covered up is that, who pay more money, or who pay the money earlier, anyone could be in front of the search results, and who make more efforts to publicize, whoever would have dominant. In terms of Internet users, whether search results are justice or not is no way of knowing, entirely possible to fall into the inside of the soft advertising in disguise, the objective information that need could not be found. The obstacle to this state definitely creates a positive and healthy industry ecosystem.

Bittersweet PPC

PPC led to the rapid development of a number of small and medium enterprises, but it has a negative impact for businesses that not participate in the PPC, in particular, some merchants that has a considerable reputation in the industry refused to participate in the activities of PPC. Unjust ranking procedures did not fully explore the role of groups, and also be affected by the authenticity of the content of the search results.

Baidu PPC Sparked Controversy Again

According to "the Qilu Evening News" reported on May 25th, 2010, Baidu PPC sparked controversy again. Enter "China Southern Airlines" in Baidu search box to book tickets on the site, the top three were unexpectedly

scam sites, the true website were "squeezed" to the back. Reporter consulted Baidu agency in Wuhan, the staff specified that, as long as 3600RMB were deposited into the account of Baidu, you could be the top of the website. Baidu PPC were pushed to the cusp again, whether it should be subject to legal regulation or not, that led to a wide range of thinking again.

ANALYSIS OF THE LEGAL ISSUES IN THE SEARCH ENGINE MARKETING

With the rapid development of the Internet economy, the search engines as the mainstream of network marketing is the speed of light development either, and the law has relative stability, it's difficult to match the pace of change for both of them, a lot of law has not yet timely followed up in the scope of legal network marketing, or not itemized completely, thus causing all kinds of the legal gaps in the current search engine marketing, some operators often drill legal loopholes.

How to Identify the Infringement Becomes a Problem

Infringement phenomena in the search engine marketing are mainly performed in trademark infringement and copyright. Infringement is divided into direct infringement and indirect infringement, the indirect infringement is rather special, typical argument is that "contributory infringement", If the perpetrator know that others desire or being implemented direct infringement, not to stop, but to help its infringing. It is understood that the provisions of trademark infringement in China did not highlighted the difference between the direct infringement and indirect infringement, just generally one sentence "shall be an infringement of the registered trademark". In a certain extent such a provision has brought difficult for the determination and classification of such cases.

In order to avoid the risk of infringement, search engine service providers have thought published Disclaimer, for example, Baidu Disclaimer has been published on its website. However, this does not fully comply with the law, only applies to the field of network copyright, "Advertising Law" Article 38 provides that "violate the provisions of this law, publish false advertising, deception and mislead consumers, which damage the legitimate rights and interests of consumers to purchase goods or receive services, advertisers shall bear the Civil Liability, advertising operators and advertisement publishers who know or should know false advertising still design, produce and publish, shall be jointly and severally liable. Advertising operators and advertisement publishers can't provide the real name and address of the advertiser, shall be liable for all civil liability."

In the actual operation of the process of the search engine, the search engine providers are always driven by

the interests of expulsion to ignore the interests of others, and in the legal aspect, there's no clearly indicated for the definition of infringing acts, the providers will take advantage of the law in this blank regard, obtain illegal benefits on the basis of infringing others' interests.

Positions of Absolute Dominance for the Two Giants

Due to search engine giants take absolute advantage of occupying the market shares, monopoly problem is evident in the search engine industry. There is no doubt that the search engine is a shortcut in network marketing, that everyone knows, naturally all go in that way, but Baidu and Google PPC cherished precisely, thanks to its unquestionable search site status. In view of the market shares of Google, Baidu and Yahoo three major search engines in the country are occupied, therefore a formed price-fixing cartel has high possibility of wild speculations for which intends to participate in the PPC website or have been involved.

Search engine marketing monopoly is mainly reflected in the behavior of the abuse of the dominant position in the market, it has effects on competition mainly in the following aspects.

Exclude Competitors and Restrict Competition in the Market

With own market share advantage, search engine operators usually abuse this position in market competition obstacles to undermine the status of the competitors, even crowd out competitors from the market, then monopolize this market.

Excessive Pricing to Harm the Interests of Users and Make Some Users Walk Away

One way to abuse of a dominant position of the search engine operators that have a dominant market position is to raise the cost of the search engine keyword advertising, such behaviors not only damage the interests of users, but also some weak enterprises even only to give up this type of marketing.

The current antitrust laws are just for the traditional monopolistic behavior to be regulated, there are no detailed provisions for PPC and the abuse of a dominant market position in the search engine monopolistic behavior.

Low Level of Privacy Legislation

Cookie technology in the search engine applications is a technology that enables the web server to the data stored in the hard disk of the client or the client's hard disk to read data. It is a small text file stored on the user's browser by the WEB server, it can contain information about users, record the client's user ID, password, pages viewed and time stayed. Cookie technique was used to record personal information, search engine providers may collect illegal use of users' personal information, for example, through the analysis of the user's personal information, for different characteristics of users post different ads, or

for the questionnaire purposes. Do any of the provisions of China's laws in cookie technology aspect, resulting in many websites wanton use of the technology to collect personal information and sell personal information gained interests, infringe on personal privacy.

For now, there is no special legislation for the protection of privacy and internet privacy in China. Scattered about privacy protection, the relevant laws, regulations and judicial interpretation are seen, even it is a lack of scientific about saying of confusing the right to privacy and reputation, it is exited that a lower level of legislation, rules messy conflict, the lack of a system of legal protection system and other issues. In terms of China's online consumers, in the law neither the new and reasonable network privacy protection requirements for reference can use, nor can resort to traditional means of protection of privacy to protect the privacy of personal network.

Unfair Competition Law That Is not Integrated into the Search Engine Marketing Environment

Under conditions of fierce market competition, in order to compete for customers, search engine operators often seek for commercial purposes, violate the objective and impartial principle of search, in the artificial way to intervene in the search results, or take the technical means to intervene in other side's software download, hinder others the opportunity to market transactions, thereby squeeze out competitors.

Nowadays, although Section 1, (1) and (2) of "Anti-Unfair Competition Law" provide that: "in the market, business transactions should be according to the principles of voluntary participation, equality, fairness, honesty and credibility, and observe generally recognized business ethics. Unfair competition that mentioned in this law means the behaviors that damage the legitimate rights and interests of other operators, disrupt social and economic order." But in the environment of search engine marketing, "Anti-Unfair Competition Law" has limited the power and the fragmentation, unfair competition has different manifestations from the traditional environment, how to define whether the unfair competition or not, should be how to deal with the law, there are no clear formulation. But where improper means to seek a competitive advantage or to undermine the competitive advantage of others, may constitute unfair competition. Due to ignore the principle of fair competition, many search engine marketers are bound to go to court and will be punished by law.

A Variety of Hidden Dangers that be Brought by the Black-Box Operation

Due to the special nature of the operation of the search engine, in itself does not provide its own information, but from the Internet to search for information elsewhere. Under the existing conditions, the search engine can automatically distinguish the authenticity of the site

contents, therefore it can't guarantee the legitimacy and legality of providing information. If found infringing web pages in search results, the search engine service provider does not necessarily constitute infringement, firstly search engines may be unconscious "infringement", and secondly it is not easy as you think to judge whether the infringement or not. PPC service is just a technical means, not specialized tools of infringement, but because of PPC charges, the search engine service providers have an obligation to check the identity of advertisement publisher as well as keywords, and within the purview to determine rationality and legitimacy of the keywords.

Consumers' acceptance and credibility of the search results are higher than those all kinds of online advertising, which is a key reason that search engines are favored by business users. However, this is based on the expense of the right to know the cost of Internet users, because there is no clearly marked to let Internet users distinguish whether the results charge, which will lay hidden dangers for the large-scale commercialization of search engine later. Because in many cases, PPC has not only violated the law, but also damaged to the legitimate rights and interests of consumers.

RECOMMENDATIONS THAT SOLVED THE LEGAL ISSUES IN THE SEARCH ENGINE MARKETING

Search engine marketing has been widely accepted in the market today, all of the legal challenges can't be avoided, must be targeted to be resolved. For legal issues listed above, although scholars have made related research, after careful inspection data, according to today's various cases, the writer injects my own ideas, and recommendations are in the following.

Revise the Advertising Law and Do Self-Repair

On May 29th, 2006, the State Council issued the "Information Network Transmission Right Protection Regulations" (hereinafter referred to as the "Regulations"). The provisions of Article 14 of the "Regulations" are pointed that rights holders think the works and performances and so on that are served by network service provider who provide information storage space or provide the search and link service, violate their own Information Network Transmission Right or be deleted, changed own right to manage electronic information, then can submit a written notice to the network service provider, request the network service provider to remove the works, performances, sound recordings and video, or link disconnect the works and performances. This "Regulations" make the search engine service providers assume certain obligations, so that to protect some of the powers of the rights holders, there's certain positive significance for the healthy functioning of the search

engine market.

Specifically, the relevant departments should amend the existing "Advertising Law" as soon as possible, put search engine keywords service which as the main part of the network marketing into the management scope of "Advertising Law", in order to match it with an efficient network economy, further standardize good health search engine marketing, to make it a legal basis in reality operation.

Formulate an Anti-Monopoly Law Supporting Mechanism to Compensate for the Legal Vacuum

For the prevention and suppression of monopolistic behavior, to ensure fair market competition, protect consumer interests and public interests, promote the healthy development of the socialist market economy, the "Anti-monopoly Law" (AML) was passed in the twenty-ninth session of the Tenth National People's Congress Standing Committee on August 30th, 2007. Article 17 provides that "it prohibits operators with dominant market position engaging in the abuse of dominant market position", and it provides the legal basis for antitrust, but there's no specific provisions made in network marketing.

In order to regulate search engine marketing better, to ensure orderly network marketing environment, it is recommended to develop a supporting mechanism of AML in network marketing. The definition of the legal norms, we need clear and specific criteria and implementation details. For example, how to define "the behaviors of the abuse of dominant market position of the search engine industry", what specific manifestations of "the behaviors of abuse of market dominance" in the search engine industry, what kind of legal sanctions will be the extent to which corresponding behavior of the abuse of dominant market position, how to collect evidence and identify responsibilities against antitrust investigation of the search engine industry. Procedures should be clear responsibilities and enforcement procedures of the anti-monopoly law enforcement agencies. During operation, you can set up a special regulatory department, professional regulatory personnel, equipped with the appropriate hardware facilities, establish and improve the online monitoring system to provide appropriate technical support.

Another more feasible current way is in the contract to make up for the legal defects, contractual rights, define responsibilities, therefore more effectively protect the interests of the users.

Strengthen the Industry Self-Regulation to Improve the Traditional Legal

There has no the corresponding direct legal on privacy in China. The protections of privacy are scattered in a number of laws and regulations, our civil law as the law of the basic protection of the personal rights of the citizen doesn't protect citizens' privacy rights as an independent

personality rights, just simply stipulate portrait and reputation that related to citizen privacy. Actual operability and plasticity of legal protection that privacy seeks is reducing, that is not conducive to the victims' request for judicial relief.

Article 7 of "Computer Information Network International networking security management approaches" in China provides that "The users' the freedom and privacy of correspondence are protected by law. There's no unit or individual can violate the law, and use the Internet to infringe on the freedom and privacy of correspondence of the users." It should strengthen the operability of these provisions in practice.

At the same time, it is proposed to improve the traditional legal protection of privacy, while focusing on the complement network privacy law, and to establish a complete set of privacy laws. Need to pay attention to some specific problems in building network privacy protection system, for example, in the China's national conditions, historical and cultural context, list the private scope of internet privacy, what personal information can be businesses searched, what is legal way for businesses searching personal information, what kind of behavior should be classified as invasion of privacy and so on as clearly as possible. Suppliers require search engine technology has reached a certain standard, with the protection of citizens' privacy awareness, as much as possible to avoid the infringement of citizens' privacy, which would be intentional invasion of privacy should have reasonable penalties.

Protection of the privacy of network, is not just the responsibility of the law and the suppliers of the search engine, as an individual user, not only to understand the relevant laws, adept at using the law to protect own legitimate rights and interests, but also use the network to enhance the protection of personal privacy, make full consideration to the security of the personal information, to consciously take preventive measures, only the three points at the same time are be with the relevant legal awareness, pay attention to self-regulation, can create a healthy network environment.

Introduce Judicial Interpretation and Establish Oversight Mechanisms

For now, China has promulgated the "Anti-Unfair Competition Law" which is listed 11 acts of unfair competition, although there's a certain limit standard for unfair competition, on the act of unfair competition under the network environment does not make specific provisions. I believe that we can learn from foreign legislative experience, expand interpretation for acts of unfair competition that China's "Anti-Unfair Competition Law" enumerated, strengthen links with search engine marketing, increase laws, in particular the operability of the "Unfair Competition Law" in the

network environment. Clearly stated that operators shall not be contrary to the principle of good faith, harm or may harm the legitimate rights and interests of other operators and consumers, disrupt the order of the socialist market economy, otherwise violators will be subject to appropriate legal sanctions.

Nowadays Supreme People's Court should promptly sum trial experience in time, on this basis, it should be timely introduced judicial interpretation of the applicable legal acts of unfair competition in the search engine industry, there are detailed and thorough description and provisions in terms of responsibility of the principal, the typical form, punishment and compensation, in order to cope with the increasing number of disputes and litigations, to change the situations of the legal gaps and the loopholes of certain groups, to make up for this vacancy, to promote the unity of the legal norms applicable.

Meticulous Legal Regulations and Tripartite to Promote Harmony

It's necessary to regulate the relevant legal norms for PPC unspoken rules.

In China, it has not been existed a unified public ranking of technical standards so far yet, the search engine service providers use individual, unpublished or incomplete disclosure of private standards. In terms of Baidu and other search engines, the level of the "bid" is the most important standards of the ranking, so results that searchers search to gain may not be truly valuable results that have minds of searchers. But we also should take into account to that it's not quite so simple to develop a unified search engine technology standard.

Reference to foreign legislative experience, it is a good choice to regulate better operational law according to the plan. Currently, it should be strengthened to refine the interpretation of the existing law and expand the adaptive traditional legal in the network.

In summary, the search engine marketing need more legal concerns yet. It's expected that the legal issues of the aspects of search engine marketing that mentioned in this paper can be caught enough attention to the relevant departments, in our common efforts, we must be able to work together to build a harmonious network marketing environment.

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