Does Google Need to Police Its Ads for Fraud?

March 21, 2011

Do Google and other search engines have an obligation to screen their advertisers for those who may be perpetrating consumer fraud?

Google has said in the past that its AdWords Content Policy will reject advertisements for sites that make false claims and that it investigates and removes any ads that violate Google's internal policies, but a recent letter sent by a public interest group to the Federal Trade Commission may prompt new interest in this issue.

In the letter sent to the FTC on February 8, 2011, the group Consumer Watchdog contended that Google and other search engines have essentially been acting as accomplices in consumer fraud. The letter specifically noted recent FTC probes into alleged mortgage scammers that prey on struggling homeowners seeking to avoid foreclosure. According to the group, Google has turned a blind eye to their doings and has facilitated the alleged frauds. In the past, however, no federal agency has attempted to hold a search engine responsible for frauds committed by its advertisers.

Recently, more than 25 foreclosure rescue marketers have been sued for deceptive advertising by the FTC, which is conducting a major investigation under "Operation Stolen Hope." Consumer Watchdog claims that Google has been lax in preventing fraudulent advertising and is profiting from the deceptive marketers that pay thousands of dollars for prime advertising space on the search engine. Some of the ads in question can be found by using search terms such as "stop foreclosure" or "loan modification." A "cost per click" for these search terms can cost upwards of eight dollars, meaning that advertisers pay Google that amount every time someone searches that term and clicks on that ad. This translates into a big payday for Google given the thousands of times per month people search those terms.

The February 8 letter to the FTC proposes five recommendations. The first recommendation is for Google to be more diligent in screening advertising in areas where fraud is known to be a serious problem. If screening ads is not feasible, Google should ban advertising in those areas completely. The second recommendation is for Google to use its advertising techniques to post public service ads countering the deceptive ads in areas where fraud is prevalent but legitimate firms also operate. The third recommendation proposes that Google should initiate and help set industry-wide standards to prevent fraudulent advertising on the Internet. The fourth r proposes that Google donate revenue it has received from questionable financial advertising to nonprofit groups that assist consumers with credit problems. The fifth recommendation asks the FTC to begin using its legal authority under the Lanham Act to seek injunctions against search providers that accept large inventories of advertising from marketing firms that the search engines have reason to believe are engaged in deceptive practices.

Consumer Watchdog says Google is not alone in accepting deceptive advertising. According to the group, other search engines, such as Microsoft's Bing and Yahoo!, are also guilty of facilitating fraudulent advertising. Despite Google's announced policy against these ads, Consumer Watchdog says that Google does not typically ban misleading ads from questionable advertisers until after a company is sued by federal regulators.

In the past, the FTC has tended to act only against the actual perpetrators of fraud and has not begun major investigations against search engines like Google. If the FTC does look into the actions that Consumer Watchdog is describing, it would definitely be worth watching.

FTC Beat is authored by the Ifrah Law Firm, a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

The commentary and cases included in this blog are contributed by Jeff Ifrah and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. We look forward to hearing your thoughts and comments!