

Suit over search-engine keywords tries new angle

November 20 2009, By DINESH RAMDE , Associated Press Writer

(AP) -- A lawsuit in Wisconsin is bringing a fresh challenge to the practice of paying for keywords on Google and other search engines to boost one company's link over a rival's.

The practice has occasionally prompted a rival to file legal challenges alleging [trademark infringement](#). Now a Wisconsin law firm is trying a new angle - accusing its competitor of violating [privacy laws](#).

Habush Habush & Rottier is one of Wisconsin's largest law firms, specializing in personal-injury cases. But search for iterations of "Habush" and "Rottier" and a sponsored link for Cannon & Dunphy attorneys often shows up, just above the link for the Habush site.

Habush alleges that Cannon paid for the keywords "Habush" and "Rottier," in effect hijacking the names and reputation of Habush attorneys.

Cannon acknowledged paying for the keywords but denied wrongdoing, saying it was following a clearly legal business strategy.

The lawsuit was filed Thursday in Milwaukee, where Habush is headquartered. Cannon is based in nearby Brookfield.

Habush based its lawsuit on a Wisconsin right-to-privacy statute that prohibits the use of any living person's name for advertising purposes without the person's consent.

"We believe this is deceptive, confusing and misleading," firm president Robert Habush said of Cannon's strategy. "If Bill Cannon thinks this is a correct way to do business he needs to have his moral compass taken to the repair shop."

William Cannon, the founding partner of Cannon & Dunphy, said every business uses the same tactic to remind consumers of their choices.

"This is equally available to Habush if he weren't so cheap to bid on his own name," Cannon said.

One legal expert said it wasn't clear how successful Habush's lawsuit would be.

Ryan Calo, a fellow at the Center for Internet and Society at Stanford Law School, said the statute seemingly was meant to protect people from having their names and images misused to suggest they endorse or represent something. That's not the case here, he said.

"Although (Cannon's) conduct may run afoul of the literal words of the statute, I don't think the conduct at issue goes to the core of this particular aspect of privacy," he said.

Similar lawsuits have been filed over the keyword issue, with some differences. An American Airlines lawsuit targeted not a rival but [Google](#) Inc. and Yahoo Inc., and alleged not a privacy violation but that the search giants infringed on its trademarks.

American was upset that Web users who entered search terms such as AAdvantage, the trademarked name of its frequent-flier program, saw results that included links to American's Web site but also to its rivals under sponsored links.

Google compared its policy to magazines that publish a Ford ad on the page opposite a story about Chevrolets. Yahoo said it had confidence in its policies, which allow advertisers to use others' trademarked terms if they do so without creating "a likelihood of consumer confusion."

A federal judge dismissed the lawsuit against Google last year. The case against Yahoo is ongoing.

Paying a company like Google for keywords is a common business practice. Based on how much a business pays, along with other search criteria, someone who searches for those keywords will see the company's link at the top of the page, labeled as a sponsored link.

The Associated Press searched for "Habush" and "Rottier" on Thursday morning. Cannon's sponsored link appeared on Google and Bing, Microsoft Corp.'s search engine, but not Yahoo. By Thursday afternoon, the link was no longer on Google.

Cannon said his company didn't take down the Google keywords, and speculated that Habush turned the tables Thursday afternoon by paying even more for the same keywords to bump out Cannon's link.

But Habush surmised his rival faced a budget issue. A [search engine](#) like Google places ads based in part on users' clicking patterns and on the advertiser's prepaid budget for a certain number of views. Habush figured that so many people ran the search terms after news of the lawsuit emerged Thursday morning that the budget had run out.

On the Net:

Habush Habush & Rottier: <http://www.habush.com>

Cannon & Dunphy: <http://www.cannon-dunphy.com>

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