



Ohio Board of Professional Conduct

OPINION 2021-04

Issued June 11, 2021

Competitive Keyword Online Advertising

SYLLABUS: A lawyer or law firm may not purchase the name of another lawyer or law firm for use in competitive keyword online advertising.

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QUESTION PRESENTED:

Whether a lawyer may participate in competitive keyword online advertising by purchasing a competitor lawyer's name in order to prominently display the purchasing lawyer's own advertising in online search results.

APPLICABLE RULES: Prof.Cond.R. 7.1, 7.2, 8.4(a), 8.4(c), 8.4(h).

OPINION: The requesting lawyer is a member of a law firm concentrating in personal injury law. The firm advertises through use of Internet search engine providers such as Google and Yahoo. The law firm reports that it is now common practice for these search engine providers and others to permit lawyers to bid on keywords so that when a consumer enters the keyword, the advertising law firm's name is prominently displayed, typically toward the top of the search results. Search engine providers do not prohibit advertising lawyers from purchasing the name or names of another competing law firm. In most instances, keywords can be purchased by more than one advertiser. A consumer searching for a particular law firm may enter the name of one firm but intentionally or inadvertently select the link to a competing law firm as a result of the use of competitive keyword advertising.

Prof.Cond.R. 7.1 prohibits a lawyer from making a false, misleading, or nonverifiable communication about the lawyer or the lawyer's services. The rule governs all lawyer communications, including advertisements permitted by Prof.Cond.R. 7.2. The simple act of purchasing a keyword, including another lawyer's name, does not communicate anything *about* the purchasing lawyer or his or her services. The purchase and use of a keyword in advertising does not result in the dissemination of any information about the lawyer or by the lawyer that is not already publicly available. Thus, so long as the information on the purchasing lawyer's own website is not false, misleading, or nonverifiable, the communication complies with Prof.Cond.R. 7.1.

A lawyer's purchase of a competitor lawyer's name for use in keyword advertising may constitute conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Prof.Cond.R. 8.4(c). "Fraud" is defined in Prof.Cond.R. 1.0(d) as acting with intent to deceive *and* (1) making either an actual or implied misrepresentation of a material fact with knowledge of, utter disregard for, or recklessness, as to its falsity; or (2) knowingly concealing a material fact where there is a duty to disclose the material fact. *Id.* Black's Law Dictionary defines "deceit", "dishonesty", and "misrepresentation" as follows:

- (1) "Deceit" is the act of intentionally leading someone to believe something that is not true; an act designed to deceive or trick;
- (2) "Dishonesty" is deceitfulness as a character trait; behavior that deceives or cheats people; untruthfulness, untrustworthiness;
- (3) "Misrepresentation" is the act or an instance of making a false or misleading assertion about something, usually with the intent to deceive.

Black's Law Dictionary (11th ed. 2019).

The purchase and use of a competitor lawyer's or law firm's name as a keyword for advertising is an act that is designed to deceive an Internet user and thus contrary to Prof.Cond.R. 8.4(c). The advertising lawyer is attempting to deceive the consumer into selecting the advertising lawyer or law firm's website, as opposed to the intended lawyer or law firm. The effect of the purchase of the competitor lawyer's or law firm's name as a keyword is that the search result will return a list of law firms or lawyer websites with

similar keywords and may display the purchasing lawyer's website above that of the competitor lawyer. It is possible that an unsophisticated consumer will not realize that the top search result is not that of the intended lawyer or law firm. Even when the consumer is not deceived into selecting the advertising lawyer's website, that lawyer has at the very least violated Prof.Cond.R. 8.4(a) by attempting to violate Prof.Cond.R. 8.4(c). See *Geauga Cty. Bar Assn. v. Bond*, 146 Ohio St.3d 97, 2016-Ohio-187.

The Board concludes the proposed conduct may also be contrary to Prof.Cond.R. 8.4(h). Prof.Cond.R. 8.4(h) prohibits a lawyer from engaging in any other conduct that adversely reflects on the lawyer's fitness to practice law. The Court has recognized a basic professional duty of honesty and integrity. *Cincinnati Bar Assn. v. Blankenmeyer*, 2006-Ohio-2038. "One of the fundamental tenets of the professional responsibility of a lawyer is that [the lawyer] should maintain a degree of personal and professional integrity that meets the highest standard. The integrity of the profession can be maintained only if the conduct of the individual attorney is above reproach." *Cleveland Bar Assn. v. Stein*, 29 Ohio St.2d 77, 278 N.E.2d 670 (1972). The use of another lawyer's name, without consent, to increase traffic to one's own website and to further one's own financial and business interests displays a lack of professional integrity. It calls into question the lawyer's trustworthiness, sense of fairness to others, and respect for the rights of others, including those of fellow practitioners.